"LAW NOTES" YEAR BOOK, 1930.

AN ALPHABETICAL DIGEST OF THE CHIEF STATUTES, RULES, ORDERS, AND CASES OF THE YEAR 1929.

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PREFACE.

The present volume is the second of the new series of "Law Notes" Year Books. It takes up the tale where the Year Book for 1929 dropped it, and carries it on to the latter part of November, 1929. It includes all Public Statutes, Ecclesiastical Measures, Rules, Orders and Cases passed, made or decided during that period which are of importance to the general practitioner.

The alphabetical arrangement, combined with a full Index, should make it easy for the reader to ascertain with a minimum of expenditure of time whether any, and, if so, what, changes have been made in any particular branch of the law. In the Index reference is made not only to the matter included in the present volume, but also to the contents of the Year Book for 1929.

It is hoped, therefore, that the two books together constitute a complete and handy guide to the legal changes of the last two years.

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LIST OF ABBREVIATIONS.

B. W. C. C.	= Butterworth's Workmen's Compensation Cases.
C. A.	= Court of Appeal.
C. C. A.	= Court of Criminal Appeal.
C. S.	= Court of Session.
Cr. App. R.	= Criminal Appeal Cases.
D. or Div. Ct.	= Divisional Court.
Gazette	= London Gazette.
H. L.	= House of Lords.
J. P.	= Justice of the Peace.
Jud. Com.	= Judicial Committee.
L. G. R.	= Knight's Local Government Reports.
L. J.	= Law Journal Reports.
L. J. News.	= The Weekly Law Journal.
L. T.	= Law Times Reports.
L. T. J. or L. T. News.	= Law Times Newspaper.
P. C.	= Privy Council.
R. S. C.	= Rules of Supreme Court.
Sc.	= Scotland.
S. R. & O.	= Statutory Rules and Orders.
S. J. or Sol. J.	= Solicitors' Journal.
T. C.	= Tax Case Reports.
T. L. R.	= Times Law Reports.
V.-C.	= Vice-Chancellor.
W. N.	= Weekly Notes.

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These Acts and Measures and the Statutory Rules and Orders referred to in the text can be purchased through any bookseller, or directly from H.M. Stationery Office at the following addresses: Adastral House, Kingsway, London, W.C.2; 120, George Street, Edinburgh; York Street, Manchester; 1, St. Andrew's Crescent, Cardiff; 15, Donegal Square, West Belfast.

[N.B.—All Statutory Rules and Orders are price 1*d.* except where otherwise stated.]

"LAW NOTES" YEAR BOOK, 1930.

ACCRETION.

Non-tidal water.—The doctrine of accretion does not apply to a non-tidal sheet of more or less stagnant water, nor to canals or lakes. It is limited to the sea-shore and land abutting on rivers of running water. It does not apply, for instance, to the Norfolk Broads. (*Trafford* v. *Thrower*, Eve, J.)

ACCUMULATIONS.

Gift to charity.—A testator, who died in 1927, after bequeathing everything he possessed to the trustees of the Scarborough Municipal Charities, continued: "and my wish is that the interest upon my investments may be allowed to accumulate for a period of twenty-one years, or so long as the law will allow, and from that time the interest only from my investments be applied for the purchase of land, and the building thereon of almshouses for the aged poor of Scarborough, and to the payment of the rates upon the same and the keeping of the buildings in a good state of repair." It was held that the trustees were not bound by the direction to accumulate, but the case was referred to chambers to settle a scheme whereby the testator's wishes could be carried out. Sect. 166 of the Law of Property Act, 1925, did not make the direction to accumulate void, for it only applies when the only object of the accumulation is to buy land. (*Re Knapp, Spreckley* v. *Att.-Gen.*, Maugham, J., following *Wharton* v. *Masterman*, (1895) A. C. 186.)

ADEN.

Military government.—The Government of India (Aden) Act, 1929, has amended the Government of India Act by enabling

the military government of Aden to be transferred to such person as may be specified by order. This enables the existing practice (under which the military government of Aden has in fact for the last year or two been taken over by the Home Government) to be regularised.

ADMINISTRATION OF ASSETS.

Insolvent estate: Distress for rent.—Where a lessee has died insolvent, and an order for administration of his estate has been made in the Chancery Division, there is nothing in the Bankruptcy Act, 1914, or the Administration of Estates Act, 1925, to prevent the lessor from distraining for rent accruing due after the date of the administration order. Nor does sect. 35 apply as to distress for rent accruing due before the order. (*Re Wells,* Romer, J.)

Insolvent estate: Interest on debts.—Sect. 66 (1) of the Bankruptcy Act, 1914, does not apply in the Chancery administration of the insolvent estate of a deceased person. A creditor is allowed to claim interest at the rate agreed down to the date of payment. (*Re Wells,* Romer, J., applying *Re Agricultural Wholesale Society, post,* under COMPANIES WINDING-UP.)

Intestacy: Widow's life interest—No apportionment of income.—A testator left all his residuary estate, together with royalties on certain musical copyrights, to trustees upon trust to pay the income to his widow for life, and, after her death, upon trust for children or remoter issue. There being no children, Maugham, J., held that if the widow disclaimed her life interest under the will, so that the property should be dealt with as under an intestacy, she would, under that intestacy, be entitled to a life interest in the residue, and would receive the royalties as income in virtue of the Administration of Estates Act, 1925, s. 33 (5). (*Re Sullivan, Dunkley* v. *Sullivan.*)

Intestacy: Widow's £1,000, interest on.—Where a husband dies intestate, leaving a widow, but no issue, the 5 per cent. interest on the 1,000*l.*, to which the widow is entitled under sect. 46 of the Administration of Estates Act, 1925, is payable out of *corpus*. The interest cannot be a charge on the income of the

estate to which the widow is already entitled. (*Re Saunders, Public Trustee* v. *Saunders*, Eve, J.)

Legacy, contingent, interest on.—A pecuniary legacy given to an infant contingently on his attaining twenty-one does not carry the intermediate income where the testator is not *in loco parentis* to the infant, and there is no direction to appropriate funds for payment of the legacy, and no indication of an intention that the income is to be used for maintenance. Sect. 175 of the Law of Property Act, 1925, does not apply to such a legacy. The statutory power to use income for maintenance does not apply. (*Re Raine, Tyerman* v. *Stansfield,* Eve, J.)

Order of administration: Lapsed share of residue.—Four cases have been decided during the year.

(1) In *Re Lamb,* Eve, J., held that a share of residuary estate, which lapses owing to the person who would have been entitled to it under the will predeceasing the testator, is "property undisposed of by will" within clause 1 of Part II. of the First Schedule of the Administration of Estates Act, 1925, and, therefore, under sect. 34 (3) of the Act, the lapsed share is primarily liable, subject to any direction to the contrary in the will, to the discharge thereout of funeral and testamentary expenses, debts and legacies. The correctness of this decision was doubted by Lawrence, L.J., in *Re Kempthorne, Charles* v. *Kempthorne* (No. 2), *infra.*

(2) In *Re Petty* a testator devised and bequeathed his residuary real and personal estate upon trust for sale and conversion, and after directing payment of his debts, &c. out of that mixed fund, gave the residue thereof, as to one half to his wife, and as to the other half to two daughters. His wife predeceased him, and her moiety lapsed. Astbury, J., held that the debts, &c. were payable out of the whole of the mixed fund, and not primarily out of the lapsed moiety. The order of application of assets in the Administration of Estates Act, 1925, is expressly made subject to variation by the provisions of the will, which in this case clearly threw the debts, &c. on the whole of the mixed fund. It was only the moiety of the residuary fund after payment of the debts, &c. thereout that had lapsed.

This case differs from *Re Lamb* in that in *Re Lamb* there was

no trust creating a mixed fund for payment of debts, &c., but merely a gift of the residue following a general direction to pay debts, &c. and certain legacies.

(3) In *Re Atkinson,* the testator devised all his realty to his brother, who predeceased him, so that the devise lapsed. His personalty he gave to his executors and trustees on trust for conversion, and to pay his debts, &c. out of the proceeds, and hold the residue upon trust for certain legatees. Clauson, J., held that, though the lapsed realty was "property undisposed of by the will," so as to be *primâ facie* the first fund for payment of the debts, &c., yet the order laid down in the Act was only to be followed subject to the express provisions of the will, and the lapsed realty was displaced from its primary liability by the testator's direction that the debts, &c. were to be paid out of the personalty.

(4) In *Re Kempthorne, Charles* v. *Kempthorne* (No.2), a testator devised all his freehold and copyhold property to his brother, and bequeathed all his leaseholds and personalty to trustees, subject to and after payment of his debts, &c., upon trust to divide among certain persons. Some of these persons predeceased the testator. The Court of Appeal, following *Re Petty* and *Re Atkinson,* and distinguishing *Re Lamb,* held that the debts, &c. must be paid out of the whole personal estate, and not out of the lapsed shares of it.

Satisfaction of debt by legacy.—The rule that a legacy to a creditor of an amount equal to or greater than the debt operates as a satisfaction of the debt applies notwithstanding that there is interest due and unpaid in respect of the debt at the testator's death. (*Fitzgerald* v. *National Bank,* Talbot, J.)

Share of deceased child: Substitution clause—Debt of child.—If a testator gives the residue of his estate to be divided among his children, and provides that the share of a deceased child is to be taken by that child's children, a debt owed by the deceased child to the testator cannot be set off against the share claimed by the child's children. There would have been a right to retain the debt as against the deceased child, and an advancement to the child would have been retained against the child's children

(*Re Scott*, (1903) 1 Ch. 1); but there is no right to retain an ordinary debt of the child as against his children claiming under the substituted gift. (*Re Binns, Public Trustee* v. *Ingle*, Clauson, J.)

AGENCY.

Agent: Personal liability.—If, under a written contract, agents sell goods professedly on behalf of a named principal, whose authority they in fact have, and sign the contract as "agents," the agents are not personally liable. (*James & Co.* v. *John Weston & Co., Ltd.*, Acton, J.)

Authority to draw cheques.—T., a solicitor, was authorised to draw cheques on the account of his client, A., for A.'s purposes only. T., who had authority to pay cheques into the account of another client, B., obtained from B. a cheque in his (T.'s) own favour. B.'s account was, unknown to B., depleted by T.'s fraud to an extent making it insufficient to meet this cheque. T. therefore drew a cheque on A.'s account, used it to replenish B.'s account, and thus obtained payment of the cheque drawn in his own favour by B. Charles, J., held that B. was liable to A. for the amount transferred from A.'s account. B.'s bankers received payment of a cheque which they knew was drawn by A.'s agent, and were put on enquiry as to the limits of T.'s authority, and since they were agents of B. to receive and collect payment of the cheque, their knowledge must be imputed to B. (*Reckitt* v. *Nunburnholme*.)

Commission.—Where an agent is employed to sell property "at a commission of 5 per cent. on the total price paid by the purchaser," the agent cannot sue for commission until the purchaser has paid the purchase-money. (*Price, Davies & Co.* v. *Smith*, C. A.)

AGRICULTURE.

Agricultural credits.—The Agricultural Mortgage Corporation, Ltd., formed under the Agricultural Credits Act, 1928, began business on the 21st January, 1929; the offices are situated

at Stone House, Bishopsgate, E.C.2. It grants long-term loans against mortgages of agricultural land or in respect of agricultural improvements under the Land Improvements Acts.

The corporation has announced that loans on mortgages of agricultural land will be granted for periods up to sixty years and may not exceed two-thirds of the value of the land. They will be repayable by equal half-yearly instalments which cover interest, repayment of principal and all charges (other than the valuer's fees and the stamp duty on the mortgage). For a sixty year loan the half-yearly payment will be 2*l*. 15*s*. per 100*l*. for the full period of the loan.

Loans to landowners for improvements will be granted, subject to approval of the Ministry of Agriculture, for periods up to forty years. For a forty year loan the half-yearly payment will be 3*l*. per 100*l*. for the full period of the loan. This payment will cover interest, repayment of the loan and all charges other than those made by the Ministry of Agriculture, which must be paid by the borrower, and may, if desired, be added to the loan. The rate at which future new loans will be granted may be modified as circumstances require or permit.

Applications must be forwarded through one of the banks which are shareholders in the corporation, namely, Barclays Bank, Ltd., District Bank, Ltd., Glyn, Mills & Co., Lloyds Bank, Ltd., Martins Bank, Ltd., National Provincial Bank, Ltd., Westminster Bank, Ltd., Williams Deacon's Bank, Ltd., and the Bank of England. Intending borrowers are advised to consult the manager of one of the branches of the above banks, who will be glad to supply forms of application for loans and all information.

Agricultural produce: Grading and marking.—Orders have been made during the year under the Agricultural Produce (Grading and Marking) Act, 1928, with regard to the following articles:—

Apples and pears.—The Agricultural Produce (Grading and Marking) (Apples and Pears) Regulations, 1929 (S. R. & O. 1929, No. 497), revoke the Agricultural Produce (Grading and Marking) (Apples and Pears) Regulations made on the 20th day of September, 1928.

Beef.—See the Agricultural Produce (Grading and Marking) (Beef) Regulations, 1929. (S. R. & O. 1929, No. 812.)

Broccoli.—See the Agricultural Produce (Grading and Marking) (Broccoli) Regulations, 1929. (S. R. & O. 1929, No. 201.)

Cucumbers and tomatoes.—See the Agricultural Produce (Grading and Marking) (Tomatoes and Cucumbers) Regulations, 1929. (S. R. & O. 1929, No. 350.)

Eggs.—The Agricultural Produce (Grading and Marking) (Eggs) Regulations, 1928 (S. R. & O. 1928, No. 984), prescribe three designations for hen eggs, viz., Special, Standard and Pullet Standard; and three for duck eggs, viz., Special (Duck), Standard (Duck) and Ducklet Standard. The weights and descriptions of these are given in the schedule. Preserved, chilled or chemically preserved eggs must be marked in a specified manner. The Regulations also lay down how premises to be used for preserving or cold storage of eggs are to be registered.

Wheat flour.—See the Agricultural Produce (Grading and Marking) (Wheat Flour) Regulations, 1929. (S. R. & O. 1929, No. 753.)

Compensation for disturbance: Notice to quit given by tenant.—A tenant of an agricultural holding gave a notice to quit, stating that he gave it because of the landlord's refusal to agree to a demand for arbitration as to the rent. As a matter of fact, the landlord had not refused, but had merely failed to agree to the demand within a reasonable time. The tenant was held not to be entitled to compensation for disturbance. The notice must state the reason which in fact exists, though it is sufficient if it states both the reasons mentioned in sub-sect. (3) of sect. 12 of the Agricultural Holdings Act, 1923. (*Selleck* v. *Hellens,* C. A.)

Wages.—Where an agricultural labourer is hired for a given period, receiving, in return, his board and lodging and a lump sum payable at the expiration of the period of hiring (the amount complying with the Agricultural Wages (Regulation) Act, 1924), if the labourer leaves in breach of contract before expiry of the stipulated period, he is not entitled to wages for the broken period during which he in fact served. The Agricultural Wages (Re-

gulation) Act, 1924, fixing a minimum rate of wages per week, does not require payment to be made weekly, or require any payment at all where, under the contract, no liability of any kind in respect of wages has accrued. (*Pockney* v. *Atkinson,* Div. Ct.)

AIR FORCE. *And see* ARMY.

Stamps.—By the Air Force (Application of Enactments) Order, 1929 (S. R. & O. 1929, No. 78), the Stamp Act, 1891, Exemption (8), under the heading "Bill of Exchange" in the First Schedule, has been made to apply to the Air Force.

AIR NAVIGATION.

Colonies, &c.—See the Colonies, Protectorates and Mandated Territories (Amendment) Order, 1929. (S. R. & O. 1929, No. 90, price 3*d.*)

Fees.—The Air Navigation (Amendment) Order, 1929 (S. R. & O. 1929, No. 87), amends the Air Navigation (Consolidation) Order, 1923 (S. R. & O. 1923, No. 1508), by substituting a new table of fees for that in sub-para. (a) of para. 6 of Sched. VI. in that Order, and substituting a new heading for sub-para. (b) of para. 6 of Sched. VI.

Local authority providing aerodrome under sect. 8 of the Air Navigation Act, 1920, has power to carry on in connection therewith the business of the sale of petrol and oil, the Air Council having certified on the 27th August, 1929, that this is ancillary to the carrying on of an aerodrome.

ALIENS.

Domicil, evidence of change of.—The mere fact that a deportation order has been made against an alien, who has acquired a domicil of choice in England, is not sufficient to establish a change of domicil. (*Veith* v. *Veith,* Bateson, J.)

ANCIENT MONUMENTS.

Sect. 14 of the Ancient Monuments Consolidation and Amendment Act, 1913, which imposes penalties for injuring or defacing ancient monuments has been applied to several more monuments

by Order in Council of June 8th, 1929. (S. R. & O. 1929, No. 476, price 4*d.*)

ANIMALS.

"Coursing": Cruelty before release.—If a rabbit is cruelly ill-treated before being liberated for "coursing," the offenders can be convicted under sect. 1 of the Protection of Animals Act, 1911. They are not within the exception created by the section, "coursing or hunting any particular animal." (*Jenkins* v. *Ash,* Div. Ct.)

Diseases: Glanders.—See the Glanders or Farcy Order, 1929. (S. R. & O. 1929, No. 718, price 4*d.*)

Gift for benefit of.—A gift to found an animals' benevolent society, having among its objects the provision of refuges for the preservation of "all animals, birds or other creatures not human," is not a charitable gift. It would include the preservation of useless and even harmful animals, and is not beneficial to the community. (*Re Grove-Grady, Plowden* v. *Lawrence,* C. A., reversing Romer, J. (1929 Y. B. 22), and distinguishing *Re Wedgwood,* (1915) 1 Ch. 113.)

ANNUITIES.

Government.—The Government Annuities Acts, 1829 to 1888, and the enactments amending these Acts, have been consolidated by the Government Annuities Act, 1929.

ARBITRATION.

Assignee of benefit of contract, stay of proceedings brought by.—A contract between A. and B. contained an arbitration clause. A. assigned the benefit of the contract to C., who sued B. for money due under the contract. The Court stayed the proceedings. Sect. 4 of the Arbitration Act, 1889, gives the Court power to stay proceedings brought by a person claiming through or under a party to the submission. (*Aspell* v. *Seymour,* C. A.)

ARMY.

The Army and Air Force (Annual) Act, 1929, fixed the maximum numbers of the Army at 150,500, and of the Air Force at 32,000. The Act also prescribed the prices to be paid in respect of billeting (sect. 3), and made some amendments in sects. 78, 79, 83, 84 and 85 of the Army Act consequential on and supplemental to the proviso which was inserted in sect. 76 by the Army and Air Force (Annual) Act, 1922, and which relates to the date as from which the said section is to be reckoned in the case of boys enlisted before attaining the age of eighteen. (Sect. 4.) The Act also amended sect. 145, which relates to the liability of a soldier to maintain his wife and children. (Sect. 5.) These amendments made by sects. 4 and 5 apply to the Air Force Act, with some modifications. (Sect. 6.)

ASSAULT.

Justification: Schoolmaster.—A schoolmaster may administer reasonable punishment to a pupil for breaking a school rule against smoking in a public street. (*R.* v. *Newport* (*Salop*) *Justices, Ex parte Wright,* Div. Ct.)

ASSIGNMENT OF DEBT.

Set-off.—If A. assigned to B. a debt which is payable *in futuro* at the date when notice of the assignment was given to the debtor, the debtor can only set off against the assignee, B., debts which became payable by A. before the assigned debt becomes payable, if the debts to be set off were *debita in præsenti* at the date of the notice of the assignment. (*Re Pinto Leite, Ex parte Visconde des Olivaes,* Clauson, J., applying *Jeffryes* v. *Agra and Masterman's Bank* (1866), L. R. 2 Eq. 674.)

BANKRUPTCY.

Earnings after adjudication: Death of bankrupt.—An undischarged bankrupt out of his personal earnings accumulated certain sums which he placed in a bank. He incurred debts to creditors in the ordinary course of living. On his death his

executor paid his funeral expenses. It was held by Tomlin, J., that the debts incurred since adjudication, so far as they were for necessaries, and the funeral expenses should be paid in full out of the accumulations before the trustee in bankruptcy could claim the accumulations for payment of the creditors in the bankruptcy. (*Re Walter, Slocock* v. *Official Receiver.*)

Judges.—On the 20th February, 1929, the Lord Chancellor ordered that the jurisdiction of the High Court in bankruptcy should be exercised by or under the direction of Astbury, Clauson and Luxmoore, JJ., or one or more of them. On the retirement of Astbury, J., the Lord Chancellor, on the 31st October, nominated Clauson, Luxmoore, and Farwell, JJ., or one or more of them to be the bankruptcy judges.

Partnership: Deferred debt.—Where partners are bankrupt, a deferred debt of one of the partners, *e.g.*, under a covenant in his marriage settlement for the future payment of premiums on a life policy, cannot be proved against his separate estate until the partnership creditors, as well as the partner's separate creditors, have been paid in full. (*Re Cumming and West*, Tomlin, J.)

Power exercisable by bankrupt "for his own benefit."—A. made a voluntary settlement in 1913, under which the income of the settled funds was to be accumulated during his life; but he was given power to stop the accumulation and direct the trustee to pay the income to him and his wife in undivided moieties. A. was adjudicated bankrupt in 1927. Eve, J., held that this power did not vest in A.'s trustee in bankruptcy under sect. 38 (b) of the Bankruptcy Act, 1914, for A. could only exercise it for the benefit of both himself and his wife. (*Re Taylor's Settlement Trusts, Public Trustee* v. *Taylor.*)

Proof against surety.—A borrower with three sureties borrowed money from an insurance company, the loan being secured (*inter alia*) by the joint and several covenant of the borrower and the sureties. A receiving order having been made against one surety, the lender put in a proof in his bankruptcy for the amount of the loan outstanding at the date of the receiving order. Con-

siderable sums, however, had been received by the lender from the other sureties between the receiving order and the date of the proof. It was held that the proof could not be reduced by the amounts so paid. As each surety was liable for the whole debt due at the date of the receiving order, the creditor was entitled to prove for the full amount without giving credit for any sums received from other co-sureties since that date, provided that he did not in the whole recover more than 20*s.* in the pound. (*Re Houlder,* Astbury, J.)

BASTARDY.

Witnesses, compelling attendance of.—Before the Poor Law Act, 1927, the attendance of witnesses was compelled under sect. 70 of the Poor Law (Amendment) Act, 1844. But that section was repealed by the Poor Law Act, 1927. To put the matter right, the Bastardy (Witness Process) Act, 1929, has declared that sect. 70 is not repealed in its application to bastardy proceedings, and that accordingly the said section, notwithstanding the said repeal, always continued and continues in operation in its application to such proceedings.

Sect. 70 of the Poor Law (Amendment) Act, 1844, runs as follows:—"In any proceedings to be had before justices in petty or special sessions, or out of sessions, under the provisions of this Act or of any of the Acts required to be construed as one Act herewith, if any party to such proceedings request that any person be summoned to appear as a witness in such proceedings, it shall be lawful for any justice to summon such person to appear and give evidence upon the matter of such proceedings; and if any person so summoned neglect or refuse to appear to give evidence at the time and place appointed in such summons, and if proof upon oath be given of personal service of the summons upon such person, and that the reasonable expenses of attendance were paid or tendered to such person, it shall be lawful for such justice, by warrant under his hand and seal, to require such person to be brought before him, or any justices before whom such proceedings are to be had; and if any person coming or brought before any such justices in any such proceedings refuse to give evidence thereon, it shall be lawful for such justices to commit such person

to any house of correction within their jurisdiction, there to remain without bail or mainprize for any time not exceeding fourteen days, or until such person shall sooner submit himself to be examined, and in case of such submission the order of any such justice shall be a sufficient warrant for the discharge of such person."

BEER.

Duty.—See sect. 4 of the Finance Act, 1929, under the title Hops, *post*.

BILLS OF EXCHANGE.

Drawee's name not inserted.—A document which runs:—"On December 1st, 1928, pay to my order the sum of one hundred and twenty-five pounds for value received. Accepted payable at Lloyds Bank, Ltd., High Street Branch, Shoreditch, London, E.C.2. John M. Lack," is not a bill of exchange, as it does not indicate the drawee with reasonable certainty, and is not an order addressed by one person to another. It is, however, valid as a promissory note. (*Mason* v. *Lack*, Humphreys, J.)

BIRDS.

Wild Birds Protection Orders have been made as follows:—Pembroke (S. R. & O. 1929, No. 8); Gateshead (S. R. & O. 1929, No. 318); Norfolk (S. R. & O. 1929, No. 321); Durham (S. R. & O. 1929, No. 326); Darlington (S. R. & O. 1929, No. 376); Bootle (S. R. & O. 1929, No. 402); Sunderland (S. R. & O. 1929, No. 403); West Hartlepool (S. R. & O. 1929, No. 492); Birkenhead (S. R. & O. 1929, No. 503); Administrative County of Lancaster (S. R. & O. 1929, No. 814).

BIRTHS, DEATHS AND MARRIAGES.

Registers: Parochial.—*See under* Ecclesiastical Law, *post*.

Registration.—Some alterations are made by Part II. of the Local Government Act, 1929, as from the 1st April, 1930. Sect. 21 transfers the functions of boards of guardians under the Registration Acts to councils of counties or county boroughs. Sect. 22 provides that after the next vacancy the office of a regis-

tration officer shall be salaried at a remuneration decided by the council; the registration officer is to account for fees to the Registrar-General, and pay to the responsible council the sum which the Registrar-General certifies to be due. County and county borough councils are to prepare and submit schemes under this Part of the Act by April 1st, 1932. (Sect. 24.) Of more general interest is sect. 26, which amends the law as to the method of giving information of birth. The information has still to be given within three months of birth, but instead of signing the register, a person required to give the information may make and sign, in the presence of and deliver to such officer as may be prescribed, a declaration in writing of the particulars required to be registered. This officer must send the declaration to the registration officer. By the Registration of Births Regulations, 1929 (S. R. & O. 1929, No. 371), the Registrar-General has directed that the declaration shall be made and signed in the presence of and delivered to a registrar of births and deaths.

BRIDGES.

Maintenance, &c.—The Bridges Act, 1929, enables highway authorities and the owners of bridges to make agreements with respect to the maintenance, improvement, reconstruction and transfer of such bridges, and of the approaches thereto and the roads carried thereby. It also empowers the Minister of Transport, in the absence of any such agreement, to make orders with respect to the matters aforesaid.

The bridges to which the Act applies are bridges or viaducts by which a public carriage road is carried over any railway, canal, river, creek, watercourse, marsh or other place where water flows or is collected, or any ravine or other depression, not being bridges or viaducts for the maintenance and repair of which a highway authority is responsible.

BUILDING.

Covenant not to erect buildings.—A purchaser covenanted not to erect on the land any buildings except as permitted by the conveyance. The permitted buildings included "dwarf walls or fences." Maugham, J., held that an advertisement hoarding was

a "building" within the covenant, and, the defendants having bought the land from the purchaser with knowledge of the covenant, and having continued to put up the hoarding in spite of notice from the plaintiff to discontinue its erection, his Lordship granted a mandatory injunction ordering them to pull down the hoarding. (*Stevens* v. *Willing & Co., Ltd.*)

BURIAL GROUND.

Allotment for particular religious denomination.—If under the Burial Acts, 1852 and 1853, part of the unconsecrated portion of a burial ground is allotted for the accommodation of persons of a particular religious denomination, the effect is that no persons not of that religion can be buried there, but it does not mean that only the rites of that religion can be performed there. The Attorney-General could take proceedings to restrain the burial in the allotted part of persons not of the specified religion, but nothing in the Acts enables any particular rites to be enforced in regard to burials in the allotted part, or renders unlawful the performance of any particular rites in regard to such burials. (*Preston Corporation* v. *Pyke*, Clauson, J.)

Disused.—If a piece of land is set apart as a burial ground, and its use as a burial ground is subsequently discontinued, the whole of it is a disused burial ground, so that even parts of it in which no interment has taken place cannot be used for building. For the case to fall within the exception in sect. 5 of the Disused Burial Grounds Act, 1884—*i.e.*, a burial ground disposed of under the authority of an Act of Parliament—the Act must relate specially to the land itself. (*London County Council* v. *Greenwich Borough Council*, Astbury, J.)

CANADA.

Senate: Women.—Women are eligible for appointment by the Governor-General as members of the Canadian Senate. The word "persons" in sect. 24 of the British North America Act, 1867, includes members of both sexes. (*Edwards* v. *Att.-Gen. for Canada*, P. C.)

CHARITY.

Animals.—See *Re Grove-Grady, ante,* p. 9.

Legacies to clubs.—*See under* WILLS.

"Objects connected with the Church."—A testatrix gave property to "the vicar of St. Alban's Church, Brook Street, Holborn, for such objects connected with the Church as he shall think fit." The gift was held void by Eve, J., but the Court of Appeal held it good. "Objects connected with the Church" did not mean parochial objects, but objects connected with the fabric and services of the Church. The gift was therefore purely charitable. (*Re Bain, Public Trustee* v. *Ross,* C. A.)

Primrose League.—A testatrix gave a leasehold house "to the Primrose League of the Conservative cause, to be used as a habitation in connection with the League or in a manner which will benefit the cause." As the gift was impressed with a trust, and the property could not be sold, and as the League was not a charity, the gift failed. (*Re Jones, Public Trustee* v. *Earl of Clarendon,* Eve, J.)

CHEMISTS.

Northern Irish.—The Pharmacy Act, 1929, authorised the Council of the Pharmaceutical Society of Great Britain to make bye laws providing for the registration, without examination, of persons registered as pharmaceutical chemists in Northern Ireland.

CHINA. *And see* COMPANY (DOMINION REGISTER).

Consular fees.—The Consular Fees (Amendment) Order in Council, 1929 (S. R. & O. 1929, No. 372), fixes the currency in which consular fees in China are to be paid.

CLUB.

Expulsion: Questions for Court.—In an action against the officers of a club for an injunction to prevent them from expelling the plaintiff, the questions for the Court are (1) whether the rules of the club have been observed; (2) whether the plaintiff has been

given a fair hearing; (3) whether the officers have acted in good faith. All these questions must be answered in the affirmative to make the expulsion proper. (*Lamberton* v. *Thorpe*, Luxmoore, J.)

COLONIAL DEVELOPMENT.

The Colonial Development Act, 1929, authorised the Treasury to make advances up to 1,000,000*l.* a year for aiding and developing agriculture and industry in certain colonies and territories.

COLONIAL STOCK.

Additions to the list of Stocks which are trust investments under sect. 2 of the Colonial Stock Act, 1900:—

British Guiana Government 5 per cent. Inscribed Stock, 1949—1969.

Government of New Zealand $4\frac{1}{2}$ per cent. Inscribed Stock, 1948—1958.

Southern Rhodesia $4\frac{1}{2}$ per cent. Inscribed Stock, 1958—1968.

The restrictions mentioned in sect. 2 (1) of the Trustee Act, 1925, apply to the above Stocks.

Protected and mandated territories.—The Colonial Development Act, 1929, s. 3, gives His Majesty power to make an Order in Council extending the Colonial Stock Acts, 1877 to 1900, so as to apply to stock issued after the 26th July, 1929, and forming part of the public debt of any territory which is under His Majesty's protection, or in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom.

COMPANIES ACT, 1929.

The Companies Acts, 1908 to 1928, and certain other enactments connected with the said Acts, have been consolidated by the Companies Act, 1929, which was brought into force on November 1st, by Order in Council, S. R. & O. 1929, No. 546.

The new law in the Act consists of the provisions of the Act of 1928, which, except sects. 53 and 96, were only momentarily in force. The consolidating Act contains 385 sections and twelve schedules.

It is impossible in the space at our disposal to set out all the new law contained in the Act. We can only call attention to the main changes effected by it.

Accounts.—Every company must keep proper books of account with respect to (a) all sums received and expended, (b) all sales and purchases of goods, and (c) the assets and liabilities. The books will be open to inspection by the directors at all times. (Sect. 122.)

The directors must, not later than eighteen months after incorporation, and subsequently at least once in every calendar year, lay before a general meeting a profit and loss account (or an income and expenditure account, if the company is not trading for profit). The account must be made up to a date not earlier than nine months before the meeting, or twelve months if the company carries on business abroad or has interests abroad. But the Board of Trade may extend the above-mentioned times. (Sect. 123 (1).)

A balance sheet must also be laid before a general meeting every calendar year, must have attached to it a report by the directors as to the state of the company's affairs, dividend (if any) recommended, and amount proposed to be carried to reserve. (Sect. 123 (2).) As to the form of the balance sheet, see sects. 124—127.

Except in the case of a private company, a copy of every balance sheet (including every document required by law to be annexed thereto), which is to be laid before a general meeting, together with a copy of the auditors' report, must be sent at least seven days before the meeting to all persons entitled to receive notice of meeting. (Sect. 130.)

Annual return.—The provisions on this subject are contained in sects. 108—111. Several amendments have been made. An annual return containing certain particulars must be filed by a company not having a share capital. (Sect. 109.) Formerly

only a company having a share capital had to make the annual return. In the case of a company having a share capital, the return must have annexed to it an index of the names of the members if they are not arranged alphabetically in the list. The return must state the address of the registered office. But the most important alteration is with regard to the balance sheet. No longer will a company be able to file the same old balance sheet year after year, for, except where the company is a private company, or is an assurance company which has complied with sect. 7 (4) of the Assurance Companies Act, 1909, the annual return must include a written copy, certified as true, of the last balance sheet, which has been audited by the company's auditors; and by sect. 123 (2) (*see under* ACCOUNTS, *ante*), a balance sheet has to be prepared and audited every year. As to the balance sheet generally, see sects. 123—130.

Arrangements.—*See* COMPROMISES, *infra*, and RECONSTRUCTION AND AMALGAMATION, *infra*.

Auditors.—The provisions as to auditors are to be found in sects. 132 to 134, which alter the previous law in some respects. A director or officer of the company has always been ineligible for the post of auditor; sect. 133 disqualifies also a partner or employee of any officer, unless the company is a private company. A body corporate cannot now be appointed as auditor. (Sect. 133 (1).) The provisions as to the appointment of the first auditors are amended. (Sect. 132 (4).) Auditors are entitled to attend any general meeting at which any accounts examined or reported on by them are to be laid before the company, and to make any statement or explanation. (Sect. 134 (3).)

Auditors cannot be exempted from liability for negligence by any provision in the articles or in any contract (sect. 152), but the Court can relieve them of liability under sect. 372.

Balance sheet.—Lengthy new provisions are contained in sects. 123—130 with regard to the balance sheet of a company.

A member or debenture holder can demand gratis a copy of the last balance sheet and of the auditors' report. But this does not apply to a private company. (Sect. 130 (1).)

See also under ACCOUNTS and ANNUAL RETURN, *ante*.

Capital: Alteration.—The powers of altering share capital conferred formerly by sect. 41 of the Act of 1908, but now by sect. 50 of the Act of 1929, must be exercised by the company in general meeting. But no special resolution is required, even for sub-division of shares.

The powers are made to apply to a company limited by guarantee and having a share capital, as well as to a company limited by shares.

Capital: Alteration—Notice to registrar.—The present provisions as to notice are slightly different from the old. Notice must be given of redemption of redeemable preference shares (see sect. 46, *post*, p. 37), and of the cancellation of shares (otherwise than by a reduction of share capital under sect. 55 of the Act), as well as of consolidation, conversion of shares into stock and re-conversion of stock into shares. The notice of any of these alterations of share capital must be given within one month. (Sect. 51.)

The notice of increase of share capital required to be given to the registrar must include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued; and a printed copy of the resolution authorising the increase must be forwarded with the notice. (Sect. 52.)

Capital: Reduction.—Three alterations are made:—(a) A new provision—sect. 57 (2)—is substituted for sect. 48 of the Act of 1908 with regard to the addition of the words "and reduced" to the company's name. Those words need only be added to the company's name where the Court, on making the order confirming the reduction, so directs for special reasons. (b) In special circumstances, the Court may direct that the provisions dealing with objections of creditors and the settlement of a list of objecting creditors shall not apply to a particular class or classes of creditors. (Sect. 56 (3).) (c) Sect. 40 of the Act of 1908, which gave power to return accumulated profits in reduction of capital, is repealed and not re-enacted—probably because it provided an easy method of evading payment of super-tax.

Capital: Reorganisation.—Sect. 45 of the Act of 1908 was repealed by sect. 53 of the Act of 1928, and this repeal was brought into effect on the 7th February, 1929, by an Order in Council.

Reorganisation of share capital which involves an alteration of the memorandum by the consolidation of shares of different classes, or the division of shares into shares of different classes, could formerly be effected only under sect. 45. Sect. 53 of the Act of 1928, which is now incorporated in sect. 153 of the Act of 1929, made such reorganisation an "arrangement" within sect. 120 of the Act of 1908, the procedure under which was simpler than under sect. 45. It can now be carried through like any other arrangement under sect. 153.

Certificates, issue of.—Sect. 92 of the Act of 1908 is reproduced in an amended form by sect. 67.

Colonial Register.—*See* DOMINION REGISTERS, *infra*.

Compromises with creditors and shareholders.—The Court's order approving an arrangement will have no effect until an office copy of it is filed with the registrar. A copy of the order must be annexed to every copy of the memorandum subsequently issued. The majority required to approve the arrangement is altered. It is a majority in number representing three-fourths in value as before, but of those present and voting, not of those present. (Sect. 153.) *And see under* CAPITAL: REORGANISATION, *supra*, and RECONSTRUCTION AND AMALGAMATION, *infra*.

Debentures: Inspection of register.—Some slight amendments are made with regard to the inspection of the register of debenture holders and the right to have copies of the trust deed. (Sect. 73.)

Debentures, re-issue of redeemed.—Some amendments are made in the provision—now sect. 75—relating to this.

Directors: Appointment or advertisement.—Sect. 72 of the Act of 1908 provided that a person could not be appointed as a director, and could not be named as a director or proposed director, in any prospectus issued by or on behalf of the company within a year after it was entitled to commence business, or in the statement

filed in lieu of prospectus, unless two conditions were fulfilled:—(i) he must have signed and filed a written consent to act; and (ii) he must have either signed the memorandum for his qualification shares or signed and filed a written contract to take them from the company. Some alterations are now made in this provision by sect. 140, which replaces it:—

(a) The provision is extended so as to apply to the naming of a person as proposed director of an intended company in any prospectus issued in relation to that intended company.

(b) Four ways are mentioned in which the second condition may be fulfilled. The director must have either (1) signed the memorandum for his qualification shares, or (2) taken them from the company and paid or agreed to pay for them, or (3) signed and filed a written undertaking to take them from the company and pay for them, or (4) made and forwarded to the registrar a statutory declaration that shares to the amount of the qualification are standing in his name.

(c) If the director signs and files such an undertaking, he is in the same position as regards the shares as if he had signed the memorandum for them.

(d) Companies not having a share capital, and companies which were private companies before becoming public companies, are taken out of this provision. [Private companies were always excluded.]

Directors: Assignment of office.—Notwithstanding a provision in the articles or in an agreement authorising a director or manager to assign his office, such an assignment will be ineffective unless approved by a special resolution. (Sect. 151.)

Directors: Interest in contracts.—A director, who is interested, whether directly or indirectly, in a contract or proposed contract with the company, must disclose his interest at a meeting of directors. (Sect. 149.)

Directors: Liability.—By sect. 152, subject to certain limitations, a provision in the articles or in a contract exempting a director or other officer from, or indemnifying him against, any liability for negligence, default, breach of duty or breach of trust

is void. This is intended to meet the decision in *Re City Equitable Fire Insurance Co.*, (1925) Ch. 407.

On the other hand, the Court's power to relieve directors and others is extended. Sect. 372 allows the Court to relieve directors, managers and other officers who have acted honestly and reasonably from liability for negligence, default, breach of duty or breach of trust.

Directors, loans to, and remuneration of.—The accounts laid before every company annually in general meeting must (with some exceptions) show the amount of loans made to a director or officer, and the total amount paid to directors for remuneration. (Sect. 128.)

Directors, number of.—Every public company registered after the commencement of the Act must have at least two directors. (Sect. 139.)

Directors, payment to, for loss of office.—It is not lawful, on a transfer of the company's undertaking or property, for any payment to be made to a director as compensation for loss of office, or as consideration for his retirement, unless particulars have been disclosed to the members and approved by the company. Any payment made without disclosure and approval will be held by the director on trust for the company. (Sect. 150.)

Directors: Register.—A new section is substituted for sect. 75 of the Act of 1908. The new section—sect. 144—incorporates the Companies (Particulars as to Directors) Act, 1917, with some amendments, the most noticeable of which is that the register is to be open to inspection by members without charge, and by other persons on payment of a shilling.

Directors: Remuneration.—Members entitled to at least one-fourth of the total votes of all the members can compel the directors (unless the company decides otherwise) to furnish a statement, certified by the auditors, showing the aggregate amounts received by the directors by way of remuneration or emoluments during each of the last three years. (Sect. 148.) (*And see* DIRECTORS, LOANS TO, AND REMUNERATION OF, *ante*.)

Directors: Undischarged bankrupts.—It is a criminal offence (two years' imprisonment on conviction on indictment, or six months on summary conviction, or/and 500*l.* fine) for an undischarged bankrupt to act as director of, or directly or indirectly take part in the management of a company (including an unregistered company or a foreign company with a place of business here), unless he has obtained the leave of the Court by which he was adjudged bankrupt. There is a saving for undischarged bankrupt directors acting on the 3rd August, 1928. (Sect. 142.)

The procedure to obtain the Court's leave to act as director was laid down by Mr. Registrar Mellor on November 7th. ("Times," Nov. 8th.) The application must follow, as far as possible, the practice prevailing in the case of a discharge from bankruptcy proceedings. Application must be made by motion, supported by an affidavit by the applicant, and will be heard in open Court. The official receiver will make a report in every case on the history of the applicant's bankruptcy, and will attend on the hearing of the application. The applicant must also attend for cross-examination, if necessary, on his affidavit. Notice of the application must be given to the official receiver as soon as the application is lodged. It must be a twenty-eight days' notice.

Dissolved company.—Sect. 296 makes all property, vested in or held in trust for a company immediately before its dissolution, *bona vacantia*—including leaseholds, but not including property held by the company on trust for any other person. Hitherto, a lease has determined and freeholds have reverted to the grantor. (See *Re Higginson and Dean,* (1899) 1 Q. B. 325; *Hastings Corporation* v. *Letton,* (1908) 1 K. B. 378.)

The file of a company dissolved at least two years previously may be sent to the Record Office. (Sect. 314 (1).)

Dominion companies.—By sect. 107, Orders in Council may be made applying sects. 98 and 100 to branch registers kept here by companies incorporated in any part of His Majesty's Dominions or in any protected or mandated territory, the law of which allows such branch registers to be kept here. The sections referred to relate to inspection and rectification of the register.

Dominion registers.—A new section—sect. 103—takes the place of sect. 34 of the Act of 1908, which allowed a company to keep a colonial register—now re-christened a "Dominion register." The section is made to apply, not to "a colony," but to "any part of His Majesty's Dominions outside Great Britain, the Channel Islands or the Isle of Man," and, by sect. 106, it may be extended by Order in Council to foreign countries in which His Majesty has jurisdiction, and to protected territories. A dominion register may be kept without express authority under the articles, and there are some other alterations.

Foreign companies.—The provisions as to foreign companies carrying on business here are contained in sect. 343 and the following sections. They are extended so as to apply to companies incorporated outside Great Britain which, before the 1st April, 1909, established and still have a place of business in Great Britain, and to all companies incorporated in the Irish Free State or Northern Ireland which have such a place of business at the commencement of this Act. They must file the required particulars within one month after the commencement of this Act. There are other alterations.

Companies incorporated in the Channel Islands or the Isle of Man, if they establish a place of business in England, or if they have done so before the Act and still retain it, must forward to or file with the registrar the same documents as if they were registered in England. (Sect. 353.)

Foreign interests.—The Companies (Foreign Interests) Act, 1917, under which articles restricting the rights of aliens could not be altered without the consent of the Board of Trade, was repealed by sect. 116 of the Act of 1928, and is not re-enacted.

Investigation of company's affairs.—This is now dealt with by sects. 135 to 138, which alter the law in some respects.

The security which the Board of Trade may require to be given by the applicants for an investigation of a company's affairs by Board of Trade inspectors is limited to 100*l*. (Sect. 135 (2).)

Instead of merely incurring a penalty of 5*l*. for refusing to produce documents to the inspectors or answer their questions, the officers or agents of the company may be reported to the Court

by the inspectors, and may be punished as if guilty of contempt of Court. (Sect. 135 (5).)

New provisions are made with regard to the expenses of the investigation. (Sect. 136 (3).)

A new sub-section enables inspectors appointed by the company to report to the Court for punishment for contempt any officer or agent who refuses to produce documents or answer questions. (Sect. 137 (3).)

Meetings.—Sect. 115 makes several alterations:—

(a) Seven days' notice of meeting will not do for a special resolution—it must be a twenty-one days' notice under sect. 117 (2).

(b) For "five members may call a meeting," the section substitutes the following provision:—"Two or more members holding not less than one-tenth of the issued share capital, or, if the company has not a share capital, not less than 5 per cent. in number of the members of the company may call a meeting."

(c) The section fixes a quorum—two members personally present in case of a private company, and three in the case of any other company.

(d) Only a member can be elected as chairman.

(e) Instead of "every member shall have one vote," the new section provides that "in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each ten pounds of stock held by him, and in any other case every member shall have one vote."

(f) In cases where it is impracticable to call or conduct a meeting in the proper way, the Court may give directions as to holding the meeting.

[What is said in paragraphs (b), (c), (d) and (e) above is subject to the provisions of the articles.]

Meetings, adjourned.—Sect. 119 reverses the rule illustrated by *Neuschild* v. *British Equitorial Oil Co.*, (1925) Ch. 346, that a resolution passed at an adjourned meeting may be treated as passed at the original meeting. Resolutions passed after the Act at an adjourned meeting are to be treated for all purposes as passed on the date on which they were actually passed and not

earlier. This applies to meetings of (a) the company, (b) the holders of any class of shares, (c) the directors, and, by sect. 287, (d) any creditors or contributories.

Meetings, extraordinary.—Sect. 114 makes amendments in the provision requiring directors to convene an extraordinary general meeting on the requisition of a certain proportion of shareholders. Under the new section the requisition can be made by members holding not less than one-tenth of such of the paid-up capital as carries the right of voting at general meetings, or, if the company has no share capital, members representing not less than one-tenth of the total voting rights of all the members having a right to vote at general meetings. Members having no voting rights cannot requisition a meeting.

The new section also entitles the requisitionists to recover from the company any reasonable expenses incurred by them through the directors' failure duly to convene the meeting, and the company must deduct the money from the fees of the directors who were in default.

Meetings: Representation of other companies.—Sect. 68 of the Act of 1908 allowed a company which was a member of another company to authorise a person to represent it at meetings of that other company. In sect. 116, which replaces the old section, the provision is extended so as to apply to any corporation, whether a company within the Companies Act or not, and so as to enable the authorised representative to represent the corporation not only at meetings of the company, but also at meetings of any class of members of the company, and, where the corporation is a creditor, including a debenture holder, at any meeting of creditors.

Meetings, statutory.—The statutory meeting must be held by companies limited by guarantee and having a share capital, as well as by companies limited by shares. But private companies need not hold the meeting. A penalty for default is imposed on a director (but on no one else). (Sect. 113.)

Memorandum: Alteration.—Notwithstanding anything in the memorandum or articles, no member (unless he agrees in writing to be bound by the alteration before or after it is made)

will be bound by any alteration in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to take up or subscribe for more shares than the number held by him at the date on which the alteration is made or in any way increases his liability as at that date to contribute to the share capital of or otherwise to pay money to the company. (Sect. 22; suggested by *Biddulph and District Agricultural Society, Ltd.*, (1927) A. C. 76. Cp. Industrial and Provident Societies (Amendment) Act, 1928, 1929 Y. B. p. 1—121.)

Memorandum: Alteration of objects.—In addition to the five purposes, for which the objects clause of the memorandum could be altered under sect. 9 of the Act of 1908, it may now be altered for the purpose of including among the company's objects a power to sell or dispose of the whole or part of the undertaking of the company, or a power to amalgamate with another company or body of persons. (Sect. 5.)

Memorandum: Copies.—A member, on payment, can require a copy of any Act of Parliament which alters the memorandum, as well as of the memorandum and articles. (Sect. 23.) Also, where any alteration is made in the memorandum, every copy of the memorandum issued after the date of the alteration must be in accordance with the alteration. (Sect. 24.)

Minimum subscription.—Important amendments are made as regards the minimum subscription. It is no longer possible for the directors to fix it at, say, seven shares. By sect. 35 and Part I. of the Fourth Schedule, where shares are offered to the public for subscription, the prospectus must state (A) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums (or if any part thereof is to be defrayed in any other manner, the balance of the sums) required to be provided in respect of (a) the purchase price of any property which is to be defrayed in whole or in part out of the proceeds of the issue; (b) preliminary expenses and underwriting commission; (c) the repayment of any money borrowed for the foregoing; and (d) working capital; and (B) the amounts to be provided in respect of the matters aforesaid

otherwise than out of the proceeds of the issue, and the sources out of which these amounts are to be provided.

Then the provision as to allotment is altered, so as to make the amount specified in (A) above the minimum subscription on which the directors can proceed to allotment. (Sect. 39 (1).)

Other alterations are that the decisions in *Mears* v. *Western Canada Co.*, (1905) 2 Ch. 353, and *Burton* v. *Bevan*, (1908) 2 Ch. 240, to the effect that cheques must be cleared before allotment, are overruled (sect. 39 (1)); that the minimum subscription need not be named in the articles; and that the provisions as to minimum subscription do not apply where no offer is made to the public, sect. 85 (7) of the Act of 1908 being repealed and not re-enacted.

Minute books.—The minute books of general meetings held after the Act are to be open to inspection gratis by any member during business hours for at least two hours a day. Any member must be supplied, within seven days after request, with a copy at a charge of not more than 6*d.* per hundred words. (Sect. 121.)

Mortgages: Floating charge—Invalidity.—The period of three months mentioned in sect. 212 of the 1908 Act is altered to six months; so that a floating charge created within six months before winding-up is void except to the amount of cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, with 5 per cent. interest, unless it is proved that the company was solvent immediately after the creation of the charge. (Sect. 266.)

Mortgages: Registration.—Important alterations are made as to registration of mortgages and charges:—

(1) Sect. 79 requires registration of a mortgage or charge (a) on calls made but not paid; (b) on a ship or any share in a ship; (c) on goodwill, on any patent or licence under a patent, on any trade mark or on any copyright or licence under a copyright.

(2) Formerly, where a company acquired property subject to an existing mortgage or charge, registration was not necessary. The section requires registration if the mortgage or charge is of such a kind that it would have had to be registered if created by the company.

(3) The requirement of registration is extended to mortgages or charges on property in England belonging to a company incorporated outside England which has an established place of business in England. (Sect. 90.)

(4) What is said in paragraphs (1) and (2), above, only applies to mortgages or charges created, or property acquired, after the commencement of the Act (*i.e.*, 1st November, 1929), but within six months after the commencement of the Act every company must send to the registrar particulars of such mortgages or charges existing at that date. Penalty, 50*l.* a day; but the mortgage or charge is not affected by non-registration. (Sect. 91.)

(5) Floating charges, as well as mortgages specifically affecting the company's property, have to be entered in the register kept at its registered office. (Sect. 88.)

The Board of Trade has prescribed the following fees:—

	£	*s.*	*d.*
For registering under Part III. (with the exception of sect. 91) of the Companies Act, 1929, any charge required to be registered thereunder whether created by a company or existing on property acquired by the company—			
Where the amount of the mortgage or charge does not exceed 200*l.*	0	10	0
Where it does exceed 200*l.*	1	0	0
For registering particulars of a series of debentures under Part III. of the Companies Act, 1929—			
Where the total amount secured by the whole series does not exceed 200*l.*	0	10	0
Where it does exceed 200*l.*	1	0	0
For registering particulars of charges under sect. 91 of the Companies Act, 1929	0	5	0
For registering the appointment of a receiver or manager of the property of a company under sect. 86 of the Companies Act, 1929	0	5	0
For inspecting the register of charges—			
For each inspection	0	1	0

The order of the Board of Trade, dated March 29th, 1909, prescribing fees under sects. 93 and 94 of the Companies (Consolidation) Act, 1908, is revoked. (S. R. & O. 1929, No. 951/L. 20.)

Name of company.—No company can be registered by a name containing the words "Building Society," or (unless it is registering under sect. 18 of the Act without the word "Limited") the words "Chamber of Commerce." Nor, except with the consent of the Board of Trade, can the word "Co-operative" be used, or the word "Royal," or "Imperial," or "Municipal," or "Chartered," or any name which might suggest royal patronage or connection with the Government, or a local authority, or a society or body incorporated by royal charter. (Sect. 17.)

Private companies.—If a private company alters its articles so that they no longer include the provisions required by sect. 26 to make it a private company, it will cease to be a private company on the date of the alteration. Within fourteen days after that date it must file with the registrar a prospectus or a statement in the form set out in the Third Schedule. (Sect. 27.)

Prospectus: Foreign companies.—By sects. 354 and 355 no person may issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated, or to be incorporated, outside Great Britain, unless a prospectus containing most of the matters required to be included in a prospectus under sect. 35 and some others has been filed. Nor can a form of application for such shares or debentures be issued here, except with a proper prospectus, or except where the form of application is issued in connection with a *bonâ fide* invitation to enter into an underwriting agreement.

An offer of shares or debentures for subscription or sale to any person whose ordinary business is to buy or sell shares or debentures is not an offer to the public for the purposes of these sections. (Sect. 354 (4).)

Prospectus issued by issuing houses.—Sect. 38 contains an important extension of the meaning of "prospectus" so as to make it apply to any document offering for sale to the public any shares or debentures allotted or agreed to be allotted with a view

to all or any of them being offered for sale to the public. All enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, will apply to such a document. [The Act of 1908 only applied to prospectuses issued by or on behalf of a company, or by a person engaged or interested in the formation of a company.]

The document must contain, in addition to the other matters required by sect. 35 and the Fourth Schedule, (a) the net amount of consideration received or to be received by the company in respect of the shares or debentures to which the offer relates, and (b) the place and time at which the contract for allotment may be inspected.

Prospectus, particulars in.—Sect. 35 (as read with the Fourth Schedule) makes several alterations as regards prospectuses. *Inter alia:—*

(1) It is only necessary to state the rights of different classes of shares when shares (not debentures) are being offered; but then the rights of the different classes as to capital and dividends must be stated as well as the rights of voting. (Para. 16 of Part I. of Fourth Schedule.)

(2) The prospectus must contain a report by the company's auditors as to the profits of the company in respect of each of the three preceding financial years or such smaller number of years as it may have been carrying on business, and the dividends paid. (Para. 1 of Part II. of Fourth Schedule.)

(3) If any part of the proceeds of the issue of the shares or debentures is to be applied in purchase of any business, the prospectus must give the contents of a report made by named accountants upon the profits of the business for the three preceding financial years, or two years or one year, as the case may be, if the business has not been carried on for three years. (Para. 2 of Part II. of Fourth Schedule.)

(4) It is not lawful to issue any form of application for shares or debentures unless the form is issued with a proper prospectus. The prohibition does not apply if the form is issued (a) in connection with a *bonâ fide* invitation to enter into an

underwriting agreement, or (b) where there is no offer to the public, or (c) where there is an offer to existing shareholders or debenture holders only. (Sect. 35 (3), (5).)

(5) No liability will be incurred by any director or other person for non-compliance with or contravention of the section in respect of matters which, in the opinion of the Court dealing with the case, were immaterial, or if in all the circumstances the Court thinks the non-compliance or contravention ought reasonably to be excused. (Sect. 35 (4).)

(6) "Two years" is substituted for "one year" in the provision which dispenses with the necessity of the disclosure of certain matters in prospectuses not issued in the early days of a company. Certain particulars, *e.g.*, the contents of the memorandum, need not be stated in prospectuses issued more than *two* years after the company is entitled to commence business. (Para. 1 of Part III. of Fourth Schedule.)

Prospectus: Statement in lieu.—A new provision—sect. 40—takes the place of sect. 82 of the 1908 Act. A statement in lieu of prospectus, containing the matters set out in the Fifth Schedule to the Act, must be delivered to the registrar at least three days before the first allotment of shares or debentures by any public company having a share capital which issues no prospectus, or which has issued a prospectus but not proceeded to allot any shares offered to the public.

Receivers and managers.—Some amendments are made in the provisions relating to the delivering of accounts of receivers and managers. (Sect. 310.)

By sect. 311, the liquidator, by an application to the Court, can compel a receiver or manager appointed under the powers contained in any instrument to render proper accounts of his receipts and payments, and to pay over to the liquidator the amount properly payable to him.

Sect. 309 empowers the Court, on the liquidator's application, to fix the remuneration of such receiver or manager.

A body corporate cannot act as receiver unless appointed before the 3rd August, 1928. (Sect. 306.)

Where a receiver or manager has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document in which the name of the company appears, must contain a statement that a receiver or manager has been appointed. (Sect. 308. Cp. sect. 280 under WINDING-UP, NOTIFICATION OF, *infra*.)

Reconstruction and amalgamation.—Sect. 154 contains provisions for facilitating reconstructions and amalgamations. It gives the Court wide powers when application is made under sect. 153 to sanction a compromise or arrangement which has been proposed for the purposes of a reconstruction or amalgamation, and the scheme involves a transfer to another company of the whole or part of the undertaking or property of any company concerned in the scheme.

Register of members.—A company, having more than fifty members, must keep an index—which may be a card index—of the names of the members, unless the register is in such a form as to constitute in itself an index. The index is to be open to inspection in the same way as the register (see sect. 98). (Sect. 96.)

Register of members, copies of.—A time limit of ten days is imposed for the sending of a copy of the register to any person requiring it; and the Court can order the copy to be sent. (Sect. 98.)

Registered office.—A company must have its registered office as from the day on which it begins to carry on business, or as from the twenty-eighth day after its incorporation, whichever is the earlier; and the notice must be given within twenty-eight days after its incorporation or, in case of a change of office, of the change. (Sect. 92.)

Registrar, production of documents by.—No process for compelling production of any document kept by the registrar of companies may issue from any Court except with that Court's leave. (Sect. 314 (2).)

Resolutions: Special and extraordinary.—The provisions as to these are contained in sect. 117, which alters the previous law in the following respects:—

(1) The confirmatory meeting formerly required for a special resolution is abolished.

(2) The three-fourths majority required for an extraordinary or special resolution is a three-fourths majority of the members who, being entitled to vote, actually do vote, personally or by proxy.

(3) To be a special resolution, the resolution must be passed at a general meeting, of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given. But if all members entitled to attend and vote at any such meeting agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(4) When an extraordinary or special resolution is submitted to be passed, a poll may be demanded by such number of members entitled to vote as may be specified in the articles, but it is not in any case necessary that the demand should be made by more than five members. If the articles contain no provision as to the right to demand a poll, it may be demanded by three members entitled to vote, or by one or two such members holding not less than 15 per cent. of the paid-up share capital.

By sect. 118, the provisions with regard to forwarding to the registrar, and annexing to the articles, a printed copy of every special or extraordinary resolution are extended so as to apply not only to special and extraordinary resolutions, but also to (i) an ordinary resolution to wind up voluntarily, and (ii) certain resolutions which, though not passed as special or extraordinary resolutions, are binding on the company or on a particular class of shareholders because they are agreed to by all.

Returns.—Sects. 279, 311 and 315 provide a method of enforcing the duty of a company, receiver or liquidator to make returns, &c. The company, liquidator or receiver may be served with a notice to make the return, &c., and if the notice is not

complied with within fourteen days, a member, creditor or the registrar may apply to the Court, which may order the default to be made good, and may order the defaulter to pay the costs.

Scotch company, service on.—Where a Scotch company carries on business in England, the process of any Court in England may be served on the company by leaving it at, or sending it by post to, the principal place of business in England, addressed to the manager or other head officer in England. A copy of the process must be sent by post to the registered office. (Sect. 370 (2) and (3).)

Share-hawking.—The provisions of sect. 92 of the Companies Act, 1928, which came into force on the passing of that Act, are now contained in sect. 356 of the Act of 1929. They are dealt with in the 1929 "Year Book" at p. 1—65.

Shares: Discount.—Sect. 47 makes an important innovation. Hitherto, it has not been legal to issue shares at a discount, except when the conditions of the underwriting section (now sect. 43) were complied with. The new section allows shares of a class already issued to be issued at a discount, provided that (a) the issue is authorised by a resolution passed at a general meeting and sanctioned by the Court; (b) the resolution specifies the maximum rate of discount; (c) not less than a year has, at the date of issue, elapsed since the company was entitled to commence business; (d) the shares are issued within a month after the Court's sanction or such extended time as the Court may allow.

Particulars of the discount must be stated in the annual return, in every prospectus relating to the issue of the shares, and in every subsequent balance sheet.

Shares: Dissentient shareholders.—Sect. 155 provides a method whereby, if a scheme or contract involving the transfer of shares in a company to another company is approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, subject to an appeal to the Court, acquire the shares of dissentient shareholders.

Shares: Loans by company for purchase.—Sect. 45 prohibits the giving by a company of any financial assistance for

the purpose of a purchase of its shares by any person. But this does not prohibit (a) a loan in the ordinary course of business where lending is part of the ordinary business of the company, nor (b) the provision by a company of money for the purchase by trustees of fully-paid shares under a scheme for the benefit of employees, nor (c) the making of loans to *bonâ fide* employees (not including directors) to enable them to buy fully-paid shares to be held beneficially by them.

Shares, redeemable preference.—Sect. 46 allows a company limited by shares, if so authorised by its articles, to issue redeemable preference shares. But they can only be redeemed if they are fully paid, and only out of profits available for dividend or out of the proceeds of a fresh issue of shares made for the purpose of redemption. When redeemed out of profits, a sum equal to the amount applied in redemption must be transferred out of profits to a reserve fund called "the capital redemption reserve fund," and the provisions of the Act as to reduction of capital will apply to the fund as if it were paid-up share capital.

Shares: Transfers—Registration.—By sect. 63, notwithstanding anything in its articles, a company must not register a transfer of its shares or debentures unless a proper instrument of transfer has been delivered. But this does not prevent registration of a person to whom shares or debentures have been transmitted by operation of law. The object of the provision is to prevent the evasion of stamp duty.

The company must accept, as evidence of probate or administration, any document which is by law sufficient evidence of the grant having been made. (Sect. 69.)

Shares: Variation of rights.—Sect. 61 gives further protection to the holders of shares with special rights attached to them against being deprived of their rights without their consent. It is aimed at cases in which, though the majority of, *e.g.*, the preference shareholders agree to their rights being varied or abrogated, there is a substantial dissenting minority. A minority of at least 15 per cent. is given the right to apply to the Court, which may either disallow or confirm the variation. The section applies whenever the variation is being made under an express

provision in the memorandum or articles authorising the variation, with the consent of, or a resolution passed by, a specified proportion of the shareholders of the class affected.

Underwriting commission.—The commission paid under sect. 43, which replaces sect. 89 of the 1908 Act, must not exceed 10 per cent. of the issue price; and the number of shares which persons have agreed for a commission to subscribe for absolutely must be disclosed in the same manner as an underwriting commission. Where there is no prospectus or statement in lieu of prospectus, the statement required by the section to be delivered to the registrar must be delivered before the payment of the commission.

Winding-up: Commencement.—Where, before a petition for compulsory winding-up is presented, a resolution has been passed for voluntary winding-up, the winding-up commences at the time of the passing of the resolution. All proceedings taken in the voluntary winding-up will be deemed to have been validly taken, unless the Court, on proof of fraud or mistake, otherwise directs. (Sect. 175.)

Winding-up: Court.—Any company registered in England may be wound up by the High Court, while the Palatine Courts, a County Court (unless excluded from jurisdiction by the Lord Chancellor), if the capital paid up or credited as paid up does not exceed 10,000*l.*, and the Stannaries Court, if the company is working mines in the Stannaries, have concurrent jurisdiction if the registered office is situate within their respective jurisdictions. (Sect. 163.)

Winding-up: Disclaimer.—Hitherto, unlike a trustee in bankruptcy, a liquidator has had no right of disclaimer. Sect. 267 gives him power, with the leave of the Court, to disclaim land of any tenure burdened with onerous covenants, shares or stock in companies, unprofitable contracts, or any other property unsaleable or not readily saleable.

Winding-up: Examination.—The Court may summon before it any person deemed capable of giving information as to the promotion or formation of the company. (Sect. 214.)

When a person, publicly examined under sect. 216, applies for a declaration under sub-sect. (6) that he is exculpated from any charges brought against him, the official receiver must appear and call the Court's attention to any matters which appear to him to be relevant, and he may himself give evidence and call witnesses. (Sect. 216.)

Winding-up: Execution.—To retain against the liquidator the benefit of an execution, a creditor must have completed the execution or attachment before the commencement of the winding-up, or before the date on which he had notice of a meeting having been called, at which there is to be proposed a resolution to wind up the company voluntarily. (Sect. 268, which is modelled on sect. 40 of the Bankruptcy Act, 1914.)

If the sheriff, before sale of the goods or completion of the execution by receipt or recovery of the full amount of the levy, receives notice of the appointment of a provisional liquidator or of a winding-up order or resolution to wind up voluntarily, he must, on request, deliver the goods and any money received to the liquidator. And if the execution is in respect of a judgment for a sum exceeding 20*l*., the sheriff cannot hand over the proceeds of sale or money paid to avoid a sale to the execution creditor for fourteen days. (Sect. 269, which follows the lines of sect. 41 of the Bankruptcy Act, 1914.)

Winding-up: Foreign company.—A company incorporated outside Great Britain, which has been carrying on business in Great Britain, but ceases to do so, may be wound up as an unregistered company under Part X. of the Act, although it has been dissolved or otherwise ceased to exist under the law of its own country. (Sect. 338 (2).)

Winding-up: Fraud.—Where the official receiver has made a report of fraud against any person, the Court may prohibit that person from taking part in the management of any company for five years. (Sect. 217.)

Winding-up: Liquidator.—No body corporate may act as liquidator, unless acting under an appointment made before the 3rd August, 1928. (Sect. 278.)

Winding-up: Liquidator—Vesting of property.—When a company is being wound up by the Court, the Court, on the liquidator's application, may order any property of the company to vest in the liquidator by his official name. (Sect. 190.)

Winding-up, notification of.—When a company is being wound up, invoices, orders for goods or business letters issued by or on behalf of the company or liquidator or receiver or manager in which the company's name appears must state that the company is being wound up. (Sect. 280. Cp. sect. 308 under RECEIVERS AND MANAGERS, *supra*.)

Winding-up: Offences.—Sects. 271, 273 and 274 make various acts, committed by officers of a company, criminal offences. The sections are modelled on sects. 154, 156 and 158 of the Bankruptcy Act, 1914.

"Officer" includes any person occupying the position of a director or in accordance with whose directions or instructions the directors of a company have been accustomed to act, but not professional advisers. (See sect. 380 (2).)

Fraudulent trading is dealt with by sect. 275. Where it appears in a winding-up that the company's business has been carried on with intent to defraud creditors or for any fraudulent purpose, the Court may declare that any director who was knowingly a party to the fraud shall be personally responsible, without any limit of liability, for the liabilities of the company, and may charge the liability on any interest he has in the company's assets. He is also made criminally liable, and the Court may prohibit him from taking part in the management of any company for five years.

Winding-up: Official Receiver.—For the more convenient and economical conduct of a winding-up by the Court, the Court may order some other officer than the official receiver to act as official receiver. (Sect. 180.)

Winding-up: Prosecutions.—Provision is made by sect. 277 to secure that directors and others who have committed criminal offences shall be prosecuted. In a winding-up by or under the supervision of the Court, the Court may direct the liquidator to

prosecute or to refer the matter to the Director of Public Prosecutions. In a voluntary winding-up, it is the liquidator's duty to report the matter to the Director of Public Prosecutions, and the Court may direct him to do his duty. This does not preclude a private prosecution. (Sect. 368.)

Where proceedings are instituted by the Director of Public Prosecutions, no person who has acted as solicitor for the defendant can be required to disclose privileged communications. (Sect. 369.)

Winding-up: Stamp duty.—Where a company is being wound up by the Court, or an insolvent company is being wound up voluntarily, there is the same exemption from stamp duty as under sect. 148 of the Bankruptcy Act, 1914. (Sect. 281.)

Winding-up: Statement of affairs.—Some new law is contained in sect. 181. A statement of affairs must be submitted to the official receiver when a provisional liquidator has been appointed, equally as where a winding-up order has been made. The Court may dispense with the requirements of the section. An employee of the company, or an officer or employee of a company who is an officer of the company in liquidation, may be required to submit the statement.

Winding-up: Stay.—The liquidator and official receiver have the same right as a creditor or contributory to apply to the Court for a stay of winding-up proceedings. (Sect. 202.)

Winding-up, voluntary: Advertisement.—Notice of a resolution to wind up voluntarily must be advertised in the *Gazette* within seven days, and such advertisement is required when the resolution is an ordinary resolution, as well as when it is special or extraordinary. (Sect. 226.)

Winding-up, voluntary: Dissolution meeting.—The liquidator must, with his return to the registrar of the holding of the final dissolution meeting, send a copy of his account. (Sect. 236.)

Winding-up, voluntary: Members' or creditors' winding-up.—The Act of 1929 distinguishes between a members' voluntary winding-up (sects. 231 to 236) and a creditors' voluntary

winding-up (sects. 237 to 245). A voluntary winding-up is a creditors' voluntary winding-up in every case, unless, at a meeting of directors held before the notices of the meeting at which the resolution for winding-up is to be proposed have been sent out, the directors, or a majority of them, have made and delivered to the registrar a statutory declaration that, after full inquiry, they have formed the opinion that the company will be able to pay its debts in full within twelve months from the commencement of the liquidation. The sections relating to a creditors' voluntary winding-up contain many new provisions, designed to give the creditors greater control.

Winding-up, voluntary: Sale to company.—The section, which gives a liquidator power to accept shares, &c. as consideration for the sale of the undertaking to another company, is made to apply to a sale to any company, whether a company within the meaning of the Act or not. (Sect. 234.)

COMPANY LAW.

Debenture: Conduct of action.—The plaintiff in a debenture holders' action was the managing director of the company, and was alleged to be liable in damages to the debenture holders. The Court gave the conduct of the action to another debenture holder. Where there are matters for investigation, the conduct of the action should be given to an independent party. (*Re The Services' Club Estate Syndicate, Ltd., McCandlish* v. *The Company,* Maugham, J.)

Debenture: Preferential debts.—Where a receiver has been appointed by the holders of a debenture which gives a charge on all the assets of a company, the charge being a fixed charge on some of the assets and a floating charge on the rest, the preferential creditors are not entitled to priority of payment out of all the assets, but only out of those subject to the floating charge. (*Re Lewis Merthyr Consolidated Collieries, Ltd., Lloyds Bank* v. *The Company,* C. A., affirming Tomlin, J. (1929 Y. B. 1—62).)

A company made and sold wireless broadcasting receiving sets. A. was appointed an agent of the company to obtain purchasers of

the wireless sets, and to instal, attend to and repair the sets. A. was paid by commission. A receiver was appointed for debenture holders of the company. A. was held not to be a preferred creditor; he was not under a contract of service. (*Re General Radio Co., Ltd., First Co-operative Investment Trust, Ltd.* v. *The Company,* Clauson, J.)

An order in a debenture holder's action appointing a receiver should not contain a direction that the receiver shall forthwith pay the preferential debts out of any assets coming to his hands. In view of *Re Glyncorrwg Colliery Co.*, (1926) Ch. 951, and the Workmen's Compensation Act, 1923, the judges of the Chancery Division have decided that the practice before March, 1900, shall be reverted to. The order will direct an inquiry whether there are any, and what, preferential claims, but a direction to pay them forthwith will be omitted. The form of order was settled in *Re Burradon and Coxlodge Coal Co., Ltd.* (Maughan, J.)

Dividend: Option to purchase shares.—Under a family agreement, A. was given an option to purchase shares and debentures in a private company. A dividend was declared on the shares, payable by three instalments. After payment of the first instalment, and before the other two instalments were due, A. exercised his option. A. was held not to be entitled to the unpaid instalments; they belonged to the vendors. The declaration of dividend created a debt due to the vendors, though no step could be taken to enforce the debt until the due dates. The accruing interest on the debentures was held to belong to A. as from the date of the exercise of his option, except so far as the Apportionment Act, 1870, applied. (*Re Kidner's Agreement, Kidner* v. *Kidner,* Eve, J.)

Dominion Register.—The provisions of sects. 34, 35 and 36 of the Companies (Consolidation) Act, 1908, now sects. 103, 104 and 105 of the Companies Act, 1929, were applied to China by Order in Council, July 5th. (S. R. & O. 1929, No. 563.)

Forms.—New forms have been prescribed by the Board of Trade in the Companies (Forms) Order, made the 7th October, 1929 (S. R. & O. 1929, No. 823, price 1*s.* 4*d.*).

Lien: Trustees.—A. and B. held shares as trustees under a marriage settlement, under which A. was also a beneficiary. The company's articles gave the company a lien in respect of A.'s personal indebtedness to the company, which in other proceedings had been held postponed to the interest of the other beneficiaries under the settlement. It was held that the existence of the lien did not prevent A. and B. from making a title to a purchaser. (*Mathieson* v. *Gronow,* Humphreys, J.)

Liquidator's liability.—Company A. had entered into a "participation agreement" with Company B. for re-insurance by Company A. of marine risks undertaken by Company B. Company A. went into voluntary liquidation, and its liquidator admitted a claim by Company B. for 89,000*l.* under the participation agreement. The liquidator accepted as evidence of contracts of re-insurance what was known as the "slip," and contrary to the provisions of the Stamp Act, 1891, s. 93, and the Marine Insurance Act, 1906, ss. 4 and 22, did not ascertain whether any policies had been issued in regard to the re-insurance. The acceptance of evidence in that manner was a long-standing practice sanctioned by general custom. Maugham, J., held that the liquidator was liable for a misfeasance in the terms of sect. 215 of the Companies (Consolidation) Act, 1908 (now sect. 276 of the Act of 1929), but, in the circumstances, his Lordship did not order the liquidator to repay the whole 89,000*l.*, but only sufficient to pay the debts of the company with 5 per cent. interest. (*Re Home and Colonial Insurance Co., Ltd.*)

Objects: Alteration.—The Court will not confirm an alteration of the objects clause in the memorandum of association of a company formed to insure and indemnify owners of steamships, members of the company, where, under the alteration, the company's members can be required to become members of an outside association, and to be under an obligation to use shipping documents in a form settled by that association, whether in reference to ships insured with the company or other ships. It is doubtful whether such a case is within sect. 9 of the Companies (Consolidation) Act, 1908 (now sect. 5 of the Act of 1929). At any rate, the alteration is not one which, in the exercise of the Court's

discretion, should be allowed. (*Re North of England Protecting and Indemnity Association*, Clauson, J.)

Prospectus.—A. took shares in a company on the faith of a prospectus issued by a company formed to carry on greyhound racing on a certain site. The prospectus did not disclose (1) that the site had been scheduled for a town-planning scheme which had been registered as a land charge, and (2) that, unless the consent of the local authority should be obtained before any buildings were erected, the company would not be entitled to compensation for their possible removal under the town-planning scheme. Consent was in fact refused. A. was held to be entitled to repudiate the shares and claim repayment from the company of the money paid for them. Sect. 198 of the Law of Property Act, 1925, had no application, A. being in no sense a purchaser of the land. (*Coles* v. *White City* (*Manchester*) *Greyhound Association, Ltd.*, Eve, J., and C. A.)

Prospectus issued to agent: Misrepresentation—Repudiation by undisclosed principal.—A., who was acting as agent for an undisclosed principal, B., underwrote certain shares in a company on the basis of a draft prospectus. The allotment in respect of the proportion of shares which the underwriters had to take up was made to B., A. renouncing in his favour. It was held that B. could not repudiate the shares on discovering a material misrepresentation in the prospectus. The underwriting contract was of a kind which did not entitle an undisclosed principal to sue on it; and the contract (if any) between B. and the company, resulting from the renunciation and the acceptance of B. as a member, was not made on the faith of the draft prospectus. (*Collins* v. *Associated Greyhound Racecourses, Ltd.*, C. A.)

Rules of Supreme Court.—Proceedings in the High Court under the Companies Act, 1929 (other than winding-up), are now governed by the R. S. C. (Companies), 1929 (S. R. & O. 1929, No. 597/L. 14, price 5*d.*), which came into force on the 1st November, 1929. The old Ord. LIIIB. is repealed together with the forms referred to therein; also para. 7 of Rule 4F of Ord. LIV.; also Ord. LVc.; and the proviso to Rule 8 of

Ord. LXV. A new Ord. LIIIB. and new forms—numbered 30 to 37 in Appendix L.—are prescribed. The Rules are too lengthy to be set out, but it may be useful to note how applications have to be made.

Petition.—The following applications must be made by petition—

(a) Applications to confirm an alteration of objects under sect. 5 of the Act.

(b) Applications to confirm an alteration in the form of the constitution of the company by substituting a memorandum and articles for a deed of settlement under sect. 334 of the Act.

(c) Applications to confirm a reduction of capital under sect. 55 of the Act.

(d) Applications to confirm the reduction of any capital redemption reserve fund under sect. 46 (1) (c) of the Act.

(e) Applications to cancel, disallow or confirm any variation or abrogation of the rights of holders of special classes of shares under sect. 61 of the Act.

(f) Applications to sanction the issue of shares at a discount under sect. 47 of the Act.

(g) Applications to sanction a compromise or arrangement under sect. 153 of the Act.

(h) Applications to restore a company's name to the register under sect. 295 of the Act.

(i) Applications for relief by directors, managers or officers of a company or by persons employed as auditors by a company under sect. 372 (2) of the Act.

(j) Applications by a transferee company for the purpose of acquiring shares under sect. 155 of the Act.

Motion or summons.—The following applications must be made by motion or summons:—

(a) Applications to rectify the register of members under sect. 100 of the Act.

(b) Applications to extend the time for registration of a charge or to rectify any omission or mis-statement in any particular with respect to any charge or in a memorandum of satisfaction under sect. 85 of the Act.

Motion.—The following applications must be made by motion:—

(a) Applications for relief in case of default in delivering documents to the Registrar of Companies under sect. 42 of the Act.

(b) Applications for relief in case of default by a private company in complying with the provisions of its articles under sect. 27 (3) of the Act.

(c) Applications to inquire into the case of officers or agents of a company who have refused to produce any document or answer any question under sect. 135 (5) or sect. 137 (3) of the Act and for orders under the said sub-sections.

Summons.—The following applications shall be made by summons:—

(a) Applications to inspect the register of members or the index of the members of a company or the annual return or to obtain copies of such register or annual return under sect. 98 or sect. 110 (2) of the Act.

(b) Applications to inspect the minutes of proceedings at general meetings of a company or to be furnished with copies thereof under sect. 121 (4) of the Act.

(c) Applications to inspect the register of directors under sect. 144 (5) of the Act.

(d) Applications to inspect copies of instruments creating a charge and to inspect the register of charges to be kept at the registered office of a company under sect. 89 (3) of the Act.

(e) Applications to inspect any register of holders of debentures of a company or for orders that copies of any such register or of any trust deed for securing any issue of debentures shall be sent to the persons requiring the same under sect. 73 (5) of the Act.

(f) Applications for and in regard to meetings of a company under sect. 112 or sect. 115 of the Act.

(g) Applications for meetings under sect. 153 of the Act.

(h) Applications for facilitating reconstructions or amalgamations of companies under sect. 154 of the Act where the matters to which such applications relate have not been dealt with, or fully dealt with, on the hearing of the petition to sanction the compromise or arrangement to which they relate.

(i) Applications in regard to certificates of shares, debentures or debenture stock certificates and for costs under sect. 67 of the Act.

(j) Applications for enforcing the duty of a company or any other person to make any return and for costs under sects. 311 or 315 of the Act.

(k) Applications for leave under sub-sect. (4) of sect. 275 of the Act.

(l) Applications to extend the time for registering documents under sect. 5 (6) or sect. 334 of the Act or under Rule 12 of this Order.

(m) Applications to extend the time for the issue of shares at a discount under sect. 47 (1) (d) of the Act.

(n) Applications by a dissenting shareholder for the purpose of preventing the acquisition of his shares under sect. 155 of the Act.

Shares: Transfer—Restriction.—Articles of association restricting transfer of shares must be so construed as not unreasonably to prevent shareholders from fairly and reasonably exercising their powers as members of the company. (*Re Hobson, Houghton & Co., Ltd.*, Maugham, J.)

Shares: Voluntary transfer to trustee for company.—Where a business was sold to a company in consideration of shares to be allotted to the vendors, by mistake too many shares were allotted to the vendors. Accordingly the vendors transferred the excess to a director upon trust to use or sell them for the benefit of the company. Romer, J., held that the transfer did not offend against any legal principle, and that the transfer was valid although made to a nominee on trusts which involved an obligation on the trustee to vote in respect of the shares as the company might direct. (*Kirby* v. *Wilkins*.)

Winding-up: Fees.—These are now regulated by the Companies (Board of Trade) Fees Order, 1929 (S. R. & O. 1929, No. 831/L. 18), which repeals the order of 1927.

Winding-up: Insurance company—Pension granted to retired officer—Proof.—A life insurance company granted a pension to an officer on his retirement. The company was subse-

quently ordered to be wound up compulsorily, and the officer lodged a proof in respect of his pension, but died before the proof had been dealt with. Romer, J., held that the pension was an annuity within the meaning of the Assurance Companies Act, 1909, and must be valued, as at the date of the winding-up order, in the manner indicated in that statute. (*Re Profits and Income Insurance Co., Ltd.*)

Winding-up: Interest on debt.—Sect. 207 of the Companies (Consolidation) Act, 1908 (now sect. 262 of the Companies Act, 1929), does not import into the winding-up of an insolvent company the bankruptcy rule as to payment of interest now contained in sect. 66 of the Bankruptcy Act, 1914. (*Re Agricultural Wholesale Society, Ltd.*, Maugham, J. This was followed in *Re Wells, ante,* p. 2.)

Winding-up: Petition—Advertisement.—In making an order for the compulsory winding-up of a company in March, Romer, J., drew attention to a mistake in the advertisement of the petition and said that mistakes frequently occurred in advertisements of this kind, and that it was his intention to disallow the cost of the advertisement in cases in which the statutory form was not strictly followed.

Winding-up: Preference shares—Arrears of dividend.—If preferred shares carry a fixed cumulative dividend out of any profits of the company divisible by way of dividend, with priority, in the event of a winding-up, for any arrears of dividend due at the date thereof, the preference shareholders have no priority in respect of dividend where, at the date of the winding-up, the company, having made no profit, has declared no dividend. No dividend having been declared, no dividend is "due." (*Re Roberts and Cooper, Ltd.*, Eve, J.)

Winding-up: Preference shares—Arrears of dividend—Income tax.—If preference shareholders have a right under the articles, in the event of a winding-up, to receive a return of their capital and arrears of dividend in priority to the ordinary shareholders, they are entitled to have the arrears of dividend paid free of income tax. The expression "arrears of dividend" is not the

same thing as arrears of such sums as the preference shareholders would have received after deduction of income tax. (*Re Dominion Tar and Chemical Co., Ltd.*, Eve, J.)

Winding-up: Preferential claim for workmen's compensation—Insurance.—A company's workmen are preferred creditors in respect of compensation payable under the Workmen's Compensation Act, 1925, if the company has entered into an insurance contract, but the liability of the insurers has come to an end before the company is wound up. Sect. 7 (5) of the Act only applies when at the date of the winding-up there is some liability of insurers, the benefit of which is capable of being transferred to the workmen. It cannot apply to a case where the liability has come to an end before that date. (*Re Bebside Coal Co., Ltd.*, Romer, J.)

Winding-up Rules.—The Rules of 1909 and all rules amending or supplementing them, and the Forms have been repealed and replaced by the Companies (Winding-up) Rules, 1929. (S. R. & O. 1929, No. 612/L. 16, price 3*s*. net.) Two amendments have been made in the latter by the Companies (Winding-up) Amendment Rules, 1929. Rule 19 is altered; instead of the fee mentioned in the rule, a creditor or contributory must pay "the prescribed fee" for inspection of the file of proceedings in winding-up and for copies. And a new rule is inserted, Rule 22A, relating to payment by the High Bailiff of a County Court to the Registrar under an execution against the goods of a company.

CONTRACT.

Acceptance: Offeree's death.—Trustees wrote to the solicitors of an annuitant offering to redeem the annuity for a capital sum, and enclosed a release of the annuity to be executed by the annuitant if the offer was accepted. The annuitant, who lived abroad, was informed of this, and on January 12th, 1928, executed the release and sent it to her solicitors, with instructions only to hand it over on receipt of the capital sum and arrears of the annuity to date. The trustees were informed of this on January 24th, and on January 30th made the necessary payment to the annuitant's solicitors, and were given the release. All parties

were unaware that the annuitant had meantime died on January 17th. The trustees were able to claim the return of the capital sum. There was no concluded contract, since the annuitant's acceptance of the offer was not communicated to the trustees till after her death had ended the authority of her solicitors to communicate the acceptance. The trustees could recover the money on the ground that the consideration for the payment had totally failed. (*Kennedy* v. *Thomassen*, Eve, J.)

Construction.—A contract for the sale of the seller's entire output of goods for a period of twelve months from April 22nd, 1927, was determinable "with six months' notice on either side thereafter." It was held that the contract could only be terminated by six months' notice given on or after April 22nd, 1928, and expiring six months from the date thereof. (*Jacks* (*William*) *& Co.* v. *Palmer's Shipbuilding and Iron Co., Ltd.*, C. A.)

Deed: Variation by writing.—A contract made by deed may be varied by a subsequent agreement in writing. Although, at common law, a contract under seal could only be varied by a subsequent deed, the Courts of equity recognised rescission or variation by an agreement in writing not under seal, and the equity rule now prevails under sect. 44 of the Judicature Act, 1925. (*Berry* v. *Berry*, Div. Ct.)

Employees of local authority: Enlistment—"Full regular pay."—A borough council resolved to pay all employees enlisting for naval or military service "full regular pay," less government service pay and separation allowance. Eve, J. (distinguishing *Sutton* v. *Att.-Gen.*, 39 T. L. R. 294), held that an employee enlisting on the faith of this resolution was not entitled to certain increments of pay and war bonuses paid during the war to employees of the council, which he would have received if he had not joined the army. (*Stevens* v. *Hampstead Borough Council.*)

Indeterminate terms.—Where one or more of the material terms of an alleged contract cannot be determined, either by interpretation or as being of a kind which the law will supply, there is no contract, even though there has been an act of part perform-

ance, and the Court cannot grant either specific performance or damages. (*Stimson* v. *Gray*, Maugham, J.)

Public policy: "Whisky-running."—The Courts will not enforce a contract entered into with the object of shipping whisky into the United States. The contract is void, as it is formed to derive profit from the commission of a criminal offence in a foreign and friendly country. (*Foster* v. *Driscoll*, C. A., Lawrence and Sankey, L.JJ., Scrutton, L.J., dissenting.)

Railway company: Ticket—"See back."—If a railway ticket has printed on its face, "see back," and on the back "issued subject to the conditions in the company's time tables and notices and excursion and other bills," the company's excursion bills referring to conditions in the company's current time tables, a person taking a ticket is bound by the conditions in the time table. (*Thompson* v. *London, Midland and Scottish Railway Co.*, C. A.)

COPYRIGHT.

Canada.—An assignee of the performing rights in Canada of a copyright musical work cannot maintain an action under the Copyright Act, 1921, of Canada, for an infringement of those rights in the absence of registration under that Act. (*Canadian Performing Rights Society, Ltd.* v. *Famous Players Canadian Corporation, Ltd.*, P. C.)

Liberia having denounced the Berne Copyright Convention of 1908, the order of the 24th day of June, 1912, so far as it applies the Copyright Act, 1911, to works of which the country of origin is Liberia, has been revoked as from the 22nd February, 1930, by the Berne Copyright Convention (Denunciation by Liberia) Order, 1929, S. R. & O. 1929, No. 657.)

Photographs.—A photographer invites well-known actresses to be photographed at his studio without charge, but the sitter, if she so desires, is supplied with prints on payment therefor. The question who has the copyright is one of fact, dependent on the circumstances of each case. *Primâ facie*, the copyright is in the photographer unless the evidence justifies the inference that the

photograph was ordered by some other person and made for valuable consideration. (*Sasha, Ltd.* v. *Stoenesco,* MacKinnon, J.)

Portuguese and Spanish colonies.—The Berne Copyright Convention (Portuguese Colonies and Spanish Colonies) Order, 1929 (S. R. & O. 1929, No. 394), extends the protection of the Copyright Act, 1911, to the colonies of Portugal and Spain, subject to certain modifications set out in that order.

Song: Mechanical reproduction—Assignment of copyright before 1912.—Before the Copyright Act, 1911, A. assigned to B. the copyright in a song of which he was the author. In 1928, C., with B.'s licence, but without A.'s authority, produced a talking, singing and musical cinematograph film imported from the United States, in the course of which a performer appeared in the film and sang the first verse of the song. The Court of Appeal held that C. had not infringed any right of A. The right of performance in public passed by the assignment to B. Sect. 19 (7) (c) of the Copyright Act, 1911, which reserved to A. the rights conferred by the Act in respect of making or authorising the making of contrivances for the mechanical performance of the song, has nothing to do with the right of performance in public. (*Thompson* v. *Warner Brothers' Pictures, Ltd.*, C. A.)

COUNTY COURTS.

Amendment: Clerical mistakes.—Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court. (Ord. XIV. r. 17, added by Rule 3 of the No. 1 Rules of 1929.)

Companies Act, proceedings under.—In para. (1) of Rule 1 of Ord. XLIA., after the expression "Companies (Consolidation) Act, 1908," there are inserted the words "or any Act, being an amendment or extension of or in substitution for the same." (No. 2 Rules of 1929.)

Costs: Action for perpetual injunction or under sects. 59, 60, 61 and 133.—By an alteration of Rule 11 of Ord. LIII., effected by the No. 2 Rules of 1929, the judge may order the costs

of these actions to be taxed "according to such one of the scales or Columns of Costs in Part IV. of the Appendix as he shall think proper."

Costs: Neglect to bring in bill for taxation.—Para. (2) of Rule 2 of Ord. LIII. is omitted, and the following paragraph substituted by the No. 2 Rules of 1929:—

> "(2) Where any party entitled to costs refuses or neglects to bring in his costs (with the necessary vouchers and papers) for taxation within the time prescribed by paragraph (1) of this Rule, or in any way delays or impedes the taxation, he shall, unless the Registrar otherwise directs, forfeit the costs to which he would be otherwise entitled for drawing his bill of costs and for attending the taxation. In such case the Registrar may also certify the costs of the other parties (if any) and certify such refusal or neglect, or may allow to the party so refusing or neglecting a nominal or other sum for his costs."

Districts.—A curious little point was dealt with by the County Court Districts (Clerkenwell Temporary Alteration) Order, 1928. (S. R. & O. 1928, No. 986/L. 32.) The building in which the Clerkenwell County Court of Middlesex was held was about to be rebuilt, and until it was ready it was desired to use 158, City Road, as a Court House and offices; but the last-mentioned building is situated outside the district of the Court, and it was doubtful whether the Court could validly be held for all purposes outside the district. The order, therefore, temporarily detached 158, City Road, from the district of the Shoreditch County Court and attached it to Clerkenwell.

The districts of Leighton Buzzard and Newport Pagnell were amalgamated as from 1st May, 1929, by the County Court Districts (Bletchley and Leighton Buzzard) Order, 1929 (S. R. & O. 1929, No. 258/L. 5, price 1*d.*). Some of the parishes of the old district of Newport Pagnell were transferred to Northampton, and some of the parishes of the old district of Leighton Buzzard to Luton and Watford. Courts of the newly constituted district are held at Bletchley and Leighton Buzzard by the name of the

County Court of Buckinghamshire held at Bletchley and Leighton Buzzard.

The new Court is excluded from having jurisdiction in bankruptcy and in proceedings under the Companies Act, and for the purpose of that jurisdiction is attached to the Northampton County Court. (County Courts Bankruptcy and Companies Jurisdiction (Bletchley and Leighton Buzzard) Order, 1929 (S. R. & O. 1929, No. 262/L. 6, price 1*d.*).)

By the County Court Districts (Crewkerne) Order, 1929 (S. R. & O. 1929, No. 429/L. 12, price 1*d.*), dated June 12th, 1929, the district of the County Court of Somersetshire held at Crewkerne was consolidated with the district of the County Court of Somersetshire held at Yeovil, and the Crewkerne Court was discontinued, and the Yeovil Court was made the Court for the district formed by the said consolidation.

By the County Court Districts (Miscellaneous No. 1) Order, 1929 (S. R. & O. 1929, No. 368/L. 10, price 1*d.*), dated May 16th, 1929, the following transfers of parishes were made:—

Kinson from Wimborne Minster to Poole and Bournemouth; Pentridge, East Woodyates and West Woodyates from Wimborne Minster to Salisbury; Keelby, Riby, Great Limber and Brocklesby from Market Rasen and Caistor to Great Grimsby; Bigby from Market Rasen and Caistor to Brigg and Scunthorpe; the Barr Ward of the County Borough of West Bromwich from Birmingham to West Bromwich; and part of Birmingham, viz., the part which constituted the parish of Quinton immediately before the Local Government Board's Provisional Order (1910) Confirmation (No. 13) Act, 1911, came into operation, from Stourbridge to Birmingham.

By the County Court Districts (Miscellaneous No. 2) Order, 1929, dated July 26th, 1929 (S. R. & O. 1929, No. 590/L. 13, price 1*d.*), the district of the County Court of Brecknockshire held at Crickhowell was consolidated with the district of the County Court of Monmouthshire held at Abergavenny and Blaenavon. The Crickhowell Court was discontinued, and the Abergavenny and Blaenavon Court was made the Court for the consolidated district.

The following transfer of parishes was made:—

Affpuddle, Moreton, Turners Puddle and Winfrith Newburgh from Swanage to Dorchester; Drayton Parslow, Mursley, Shenley Brook End, Tattenhoe and Whaddon from Buckingham to Bletchley and Leighton Buzzard; Astwood and Hardmead from Northampton to Bedford; Llanbadarn Fynydd and Llananno from Knighton to Newtown; Llanbister and Llanddewi-Ystradenny from Knighton to Llandrindod Wells; Stoke Goldington and Hanslope from Bletchley and Leighton Buzzard to Northampton.

By the County Court Districts (Yatton) Order, 1929, dated August 8th, 1929 (S. R. & O. 1929, No. 624/L. 17, price 1*d*.), the holding of a Court at Yatton in Somersetshire was discontinued, and the following transfer of parishes was made:—

Blagdon, Butcombe, Clapton and Tickenham were transferred to Bristol; Axbridge, Chapel Allerton, Charterhouse, Cheddar, Nyland cum Batcombe and Weare were transferred to Wells; Badgworth, Banwell, Biddisham, Burrington, Christon, Churchill, Clevedon, Compton Bishop, Congresbury, Kenn, Kingston Seymour, Loxton, Puxton, Rowberrow, Shipham, Walton in Gordano, Weston in Gordano, Winscombe, Wrington and Yatton were transferred to Weston-super-Mare.

The order also provided that in the district of the County Court of Somersetshire held at Weston-super-Mare a Court should be held at Weston-super-Mare and at Clevedon by the name of the County Court of Somersetshire held at Weston-super-Mare.

Ejectment action: Form of summons.—In Form 252 the expression "section 145 of 15 Geo. 5, c. 20," is substituted for "section 209 of 15 & 16 Vict. c. 76," the section of the Common Law Procedure Act, 1852, being replaced by the section of the Supreme Court of Judicature (Consolidation) Act, 1925. (County Court (No. 3) Rules, 1928.)

Ejectment or possession action: Ord. X. rr. 4 and 5; Ord. XXIIa. r. 11.—The special times prescribed by rules 4 and 5 of Ord. X. for ejectment actions are abolished. The times are the same for an ejectment action as for an action to recover

possession, the words "in an action of ejectment twelve clear days, and in an action for the recovery of possession" being omitted. (Rule 3 of County Court (No. 3) Rules, 1928.)

Under the extended jurisdiction, the times mentioned in Ord. X. rr. 4 and 5, must be read as "ten clear days" instead of "five clear days," and "eight clear days" instead of "three clear days." (*Ibid.* Rule 4.)

Execution against company.—To meet the extension of the bankruptcy rules as to incomplete executions to companies by sects. 268 and 269 of the Companies Act, 1929, some amendments have been made by the No. 2 Rules of 1929. The rules affected are Rules 34A, 35, 36 and 41 of Ord. II.; Rule 23B of Ord. XXV.; and Rule 2 (2) of Ord. XXVIII. And a new Form is substituted for Form 171 in Part I. of the Appendix, and an additional Form —Form 171A—inserted. It is a Form of "notice of withdrawal from possession on payment over of money on notice of appointment of provisional liquidator or of winding-up order or resolution." And see Rule 22A of the Companies (Winding-up) Rules, 1929, added by the Companies (Winding-up) Amendment Rules, 1929.

Execution: Præcipe—Farmer.—Rule 7 of Ord. XXV. is revoked by the No. 2 Rules of 1929, and a new rule substituted. The chief alterations are that the præcipe for an execution warrant must state the description of the person against whom the warrant is to be issued, and that, if he is described as a farmer, there must be furnished an official certificate, dated not more than three days before the application for the warrant, of the result of a search at the Land Registry as to the existence of any charge registered against him under the Agricultural Credits Act, 1928.

Fees.—The County Court Fees (Amendment) Order, 1929 (S. R. & O. 1929, No. 199/L. 4), came into operation on April 1st, 1929. It amended the Table of Fees in the Schedule to the County Court Fees Order, 1925, as follows:—

In Fee No. 1 (ii) (b) there is added to the note in the column headed "Description of Proceeding":—

> "If the rent is a nominal rent or there is no rent, then the directions contained in Fee No. 1 (ii) (a) shall apply and the

amount prescribed in that Fee shall be payable in lieu of the amount prescribed above in this Fee."

In Fee No. 4, to the description of the proceeding is added:—

"or to amend the name or description of the defendant as stated in the affidavit of debt."

In Fee No. 13, the first paragraph of the existing note is replaced by a note as follows:—

"This fee is payable—

(a) Where an action is referred to the Registrar or other officer of the Court under the County Courts Act, 1888, section 104, or the County Courts Act, 1919, section 6;

(b) On the hearing of an application to vary or remit the report of a referee other than the Registrar under Order XXA., Rule 1 (2) (i);

(d) (*sic*) On the hearing of a garnishee summons, but subject to the provisions of Order XXVI., Rule 6."

In Fee No. 16—

(a) the following paragraph and note are added to the description of the proceeding:—

"(vi) on the report of a referee (other than the Registrar or an officer of the Court) under the County Courts Act, 1888, section 104, or the County Courts Act, 1919, section 6.

This fee is not payable where Fee No. 13 has been paid."

(b) the words "the suitor claims to enter judgment" are substituted for the words "judgment is to be entered" in the column headed "Amount of Fee."

To the note to Fee No. 51 is added:—

"This fee is payable (in lieu of Fee No. 21) on the taxation of a solicitor and client bill referred to the Registrar."

A fresh fee is substituted for Fee No. 54, viz.:—

Description of Proceeding.	*Amount of Fee.*
54.—(i) On an application under Order XXV., Rule 10, 10a or 11, for leave to issue execution.	For every £ of the amount remaining due on the judgment or order, 1*s*. Maximum fee, 5*s*.

Description of Proceeding.	*Amount of Fee.*
(ii) On an application under Order XXV., Rule 14, for leave to proceed—	
(a) on a judgment for the recovery of a sum of money	Fee No. 54 (i).
(b) in any other case ...	5*s*.

In Fees Nos. 55, 56, 65 (i), 65 (ii) and 70, "1*s*." becomes "1*s*. 6*d*." and "1*l*. 10*s*." becomes "1*l*. 1*s*."

In the first paragraph of the note to Fee No. 90, after the words "expenses of the officer" is added "for travelling and subsistence."

In Fee No. 92, "Transfer of money from High Court" replaces the heading "Money or damages in Court"; in the description of the proceedings, after "On transfer," the words "or payment" are inserted; and in the note after "received from," the words "or paid in by order of" are inserted.

Fine, return of.—For the return of a fine under Ord. LII. r. 12, the consent of the Lord Chancellor, and not of the Treasury, is now required. (No. 2 Rules of 1929.)

Foreign Court, return and certificate from.—This does not now require the seal of the Court. (Rule 8 of County Court (No. 3) Rules, 1928.)

Judgment summons: Affidavit of service.—By an amendment of Rules 31 and 33 of Ord. XXV., effected by Rules 4 and 5 of the No. 1 Rules of 1929, where a judgment is served otherwise than by a bailiff, the affidavit of service must be lodged with the registrar two days before the return day, not "before or on the return day," as formerly. In the event of non-compliance with this provision, the hearing of the judgment summons shall, unless the Court otherwise orders, stand adjourned at the cost of the judgment creditor.

Judgment summons: Expenses of debtor appearing at hearing.—Rule 35 of Ord. XXV. has been amended by Rule 6 of the No. 1 Rules of 1929. The two previously existing paragraphs are now numbered (1) and (2), and the words in the paragraph with regard to the expenses of the judgment debtor appearing at the hearing are deleted and replaced by a para. (3) as follows:—

> "(3) Where the judgment debtor appears at the hearing, expenses so paid to him may, if the judge so directs and subject to Rule 54 of this Order, be allowed as expenses of a witness in any case in which the costs of witnesses may be allowed under these Rules: Provided that if the judgment debtor appears at the hearing and an order of commitment is not made, the judge may in the exercise of his discretion, allow to the judgment debtor his proper costs (including an allowance for loss of time) as upon attendance by a defendant at a trial in Court, either by way of set-off or otherwise."

Land, action to recover.—No cause of action may be joined with an action for the recovery of possession under sect. 138 or sect. 139 of the County Courts Act, 1888, except as allowed by sect. 138 (which allows joinder of a claim for rent or mesne profits up to 100*l.*). (Ord. IV. r. 1a, added by Rule 2 of the No. 1 Rules of 1929.)

Landlord and Tenant Act, 1927.—For procedure under this Act, see *post*, p. 91.

New trial.—A new trial may be ordered on any question without interfering with the finding or decision upon any other question. (Ord. XXXI. r. 2a, added by Rule 8 of the No. 1 Rules of 1929.)

Plaint: Præcipe.—If the plaintiff is a female, the præcipe must contain a statement whether she is married, single or a widow, and if she is married, the full name of her husband. (County Court (No. 3) Rules, 1928, amending Ord. V. r. 4, and Forms 6, 6A and 7.)

Possession of land, action to recover: Court's discretion.—When a tenancy has been duly determined by notice to quit the County Court judge, on an application for possession under sect. 138 of the County Courts Act, 1888, has not a complete discretion, the case not being within the Rent Acts. The section says that the judge "may order that possession . . . be given," and it gives him a certain discretion as to the time at which possession shall be given. But he cannot altogether refuse to make an order, and he can only postpone the time for possession for a reasonable period. (*Sheffield Corporation* v. *Luxford*, Div. Ct.)

Possession, warrant for, certificate of execution of.—By Rule 7 of the No. 1 Rules of 1929, the following words are added at the end of Ord. XXV. r. 66:—

> "The high bailiff shall forthwith, after executing the warrant, return it to the Registrar of the Court from which it issued, and file a certificate of his having so executed it according to the form in the Appendix, Form 265A."

This requires the seal of the Court. (Rule 18 of the No. 1 Rules of 1929.)

Remitted action, security for costs in.—Where a High Court action is remitted to the County Court, the County Court can order security for costs under Ord. XXII. r. 9, of the County Court Rules, on the ground that the defendant neither resides nor carries on business within twenty miles of the Court in which the plaint is issued. (*Riddle* v. *Playle and Another*, Div. Ct.)

Rules.—The new rules made since the last "Year Book" are the County Court (No. 3) Rules, 1928 (S. R. & O. 1928, No. 1011/L. 34); the County Court (No. 1) Rules, 1929 (S. R. & O. 1929, No. 362/L. 9, price 2*d.*); the County Court (No. 2) Rules, 1929 (S. R. & O. 1929, No. 927/L. 19, price 2*d.*). Their provisions are dealt with alphabetically.

Travelling expenses of, and allowances to, parties.—The travelling expenses of the parties, if personally attending the Court, are now dealt with by Rule 37 of Ord. LIII; for Rule 10 of the No. 1 Rules of 1929 has inserted in Rule 37, after the

words "made to witnesses," the words ", and in the discretion of the Court to plaintiffs and defendants if personally attending the Court, for the cost of travelling to and from the Court and." And, by Rule 12 of the new rules, in Ord. LIII. r. 39, the words "travelling and" are omitted. Rule 38 of Ord. LIII., which usually disentitled the plaintiff to any allowance, except for travelling, is revoked by Rule 11 of the new rules.

Warrants to be executed in foreign district.—In Rule 1 (1) and (2) of Ord. XXVIII., the words "the hand of the high bailiff and" are omitted. The warrant has merely to be under the seal of the Court. (County Court (No. 3) Rules, 1928, r. 5.)

Witnesses, allowances to.—Some alterations are made by Rules 12, 13 and 17 of the No. 1 Rules of 1929. The scale of allowances in Division (3) of Part IV. of the Appendix to the rules is revoked, and a more up-to-date scale substituted. "Gentlemen" disappear from the scale in favour of "Persons of independent means." Travelling expenses are dealt with in this scale, and the words "travelling and" are omitted from Rule 39 of Ord. LIII. Rule 37A, which related to allowances to accountants, is revoked, and in Rule 43 of Ord. LIII. the words ", such sums, not exceeding the maximum allowances mentioned in the scale for expert and scientific witnesses in the Appendix, as he may think fit, in addition to travelling expenses," are omitted.

CREAM.

Artificial cream.—The manufacture and sale of artificial cream are regulated by the Artificial Cream Act, 1929.

Sect. 1 makes it an offence for any person to sell or offer or expose for sale for human consumption under a description or designation including the word "cream" any substance purporting to be cream or artificial cream as defined in this Act, unless (a) the substance is cream as defined in this Act, or (b) where the substance is artificial cream as defined in this Act, the word "cream" is immediately preceded by the word "artificial."

An offence is also committed unless every receptacle used for the conveyance of artificial cream for sale for human consumption, or containing artificial cream at any time when it is exposed for

such sale, has the words "artificial cream" printed in large and legible type either on the receptacle itself or on a label securely attached thereto.

By sect. 2, artificial cream shall not be manufactured, sold or exposed or kept for sale for human consumption except at premises registered with the Food and Drugs Authority, who are required to keep a register and enter premises thereon on application by the owner or occupier. But this does not apply (a) to the manufacture of artificial cream by any person solely for his domestic purposes; or (b) to the manufacture on any premises of artificial cream for use in the preparation on those premises of some other article of food; or (c) to the sale, exposure or keeping for sale of artificial cream on any premises where it is not supplied otherwise than in the properly closed and unopened receptacles in which it was delivered to those premises.

Powers of inspection are given to duly authorised officers of the Food and Drugs Authority to enter and inspect registered premises, and a justice of the peace is empowered to grant a search warrant authorising any such officer as aforesaid to enter and inspect unregistered premises suspected of being used for the manufacture of artificial cream contrary to the Act, and to search for and seize any machine suitable for use in the manufacture of artificial cream.

An offence is committed by a person who uses any unregistered premises for the manufacture or sale of artificial cream in contravention of this section, or obstructs any such officer as aforesaid in the execution of his powers under this section, or fails to give any such officer all reasonable assistance in his power, or to furnish him with any information he may reasonably require.

Sect. 3 applies to artificial cream such of the provisions of the Public Health Acts, 1875 to 1926 (or, in London, the Public Health (London) Acts, 1891 to 1926), and the Milk and Dairies (Consolidation) Act, 1915, and of any order or regulation made under any of those Acts, as relate to cream (other than those relating to registration).

Sect. 4 casts on the Food and Drugs Authority the duty of enforcing the provisions of this Act (other than such of the provisions of any Act, order or regulation applied by this Act as

are enforceable by any other authority), expenses being defrayed as expenses under the Food and Drugs (Adulteration) Act, 1928.

By sect. 5, offences under the Act are, on summary conviction, punishable by a fine not exceeding, for a first offence, 5*l*., and for a second or subsequent offence, 50*l*., and where the offence is a continuing offence, by a further fine not exceeding 40*s*. per day while the offence continues.

In proceedings there is a presumption, unless the contrary is proved, that (a) where artificial cream is sold or offered, exposed or kept for sale, it is sold, &c. for human consumption, and that (b) where any article having the composition of cream or artificial cream is sold or exposed or kept for sale on premises registered under this Act, it is artificial cream.

The provisions of the Food and Drugs (Adulteration) Act, 1928, ss. 27 (6), 29 and 30, relating to offences and warranties under that Act, as set out with the appropriate modifications in the Schedule to this Act, are incorporated and applied to proceedings under this Act.

By sect. 6, "Food and Drugs Authority" has the same meaning as in the Food and Drugs (Adulteration) Act, 1928; "cream" means that portion of natural milk rich in milk fat which has been separated by skimming or otherwise; "artificial cream" means an article of food resembling cream and containing no ingredient which is not derived from milk except water or any ingredient or material which by virtue of the proviso to the Food and Drugs (Adulteration) Act, 1928, s. 2 (2), may lawfully be contained in an article sold as cream.

CRIMINAL LAW.

Bail.—On an application for bail, the gravity of the offence charged, the strength of the evidence for the prosecution, and the possible punishment are relevant factors for consideration as a guide to the probability of attendance should bail be granted. Bail should not be refused by way of punishment, but only to secure the attendance of the accused at the trial. (*Ex parte Hatry*, Div. Ct.)

Child destruction.—This is a new felony created by the Infant Life (Preservation) Act, 1929. At common law, it was

neither murder nor manslaughter to kill a child before it was completely born; the birth was treated as still incomplete until the whole body of the child was brought into the world, having an independent circulation and breathing, or being capable of breathing, from its own lungs. It is now provided by sect. 1 of this Act as follows:—

Sect. 1.—(1) Subject as hereinafter in this sub-section provided, any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, shall be guilty of felony, to wit, of child destruction, and shall be liable on conviction thereof on indictment to penal servitude for life:

Provided that no person shall be found guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

(2) For the purposes of this Act, evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be *primâ facie* proof that she was at that time pregnant of a child capable of being born alive.

By sect. 2 (1), quarter sessions have no jurisdiction over offences under this Act, or attempts to commit such an offence.

By sect. 2 (2), on a charge of murder or manslaughter of any child, or of infanticide, or of an offence under the Offences against the Person Act, 1861, s. 58 (administering drugs or using instruments to procure abortion), the jury may convict of an offence under this Act instead of the offence charged.

By sect. 2 (3), on a charge of the felony of child destruction under this Act, the jury may convict of an offence under the Offences against the Person Act, 1861, s. 58, above mentioned.

By sect. 2 (4), the Offences against the Person Act, 1861, s. 60 (which provides that a person acquitted of the murder of any child, or of infanticide, may, if shown by the evidence to be guilty of concealing the birth, be convicted and punished accordingly), shall apply in the case of the acquittal of a person on an

indictment for child destruction as it applies to the acquittal of a person on an indictment for murder or infanticide.

By sect. 2 (5), the Criminal Evidence Act, 1898, s. 4, is to have effect as if this Act were included in the schedule to that Act, with the result that, in reference to offences under this Act, the husband or wife of the accused is a competent (though not compellable) witness for the prosecution without the consent of the accused.

Costs of prosecution in summary cases.—The Home Office has given directions putting an end to the practice occasionally adopted in a county area of making the remuneration of prosecuting solicitors depend upon convictions being obtained. (Law Society's Gazette, July, 1929, p. 183.)

Habitual criminal: Admission of other offences.—Where a prisoner, after conviction, admits the commission of other offences with a view to having them taken into account in passing sentence, this admission is admissible evidence on a charge of being an habitual criminal. The admissibility of the admission does not depend on the accused's motive for making it. (*R.* v. *Arthur Williams,* C. C. A.)

Homicide: Direction to jury.—If a judge, in summing up, makes no mention of the possibility of the jury finding a verdict of manslaughter, but directs them that their verdict must be murder or acquittal, a conviction for murder will be quashed. (*R.* v. *Hall,* C. C. A.; on the facts, the Court substituted a verdict of manslaughter.)

Indictment: Amendment.—An indictment charged an offence under sect. 21 of the Larceny Act, 1916. That section is substantially a re-enactment of sect. 80 of the Larceny Act, 1861, which was the section in operation at the date of the alleged offence. The Court amended the indictment so as to substitute the old section for the new one. The defect would be fatal unless amended, but the two sections being almost identical in language, the accused would not be prejudiced by the amendment, which should therefore be made. (*R.* v. *Tuttle,* C. C. A.)

Indictment for rape: "No true bill"—Conviction for indecent assault.—A. was charged in an indictment with rape. The Grand Jury returned the bill endorsed "No true bill for rape. True bill for indecent assault (aggravated)." The trial proceeded as if an indictment for indecent assault had been preferred and a true bill found. A. was convicted of indecent assault. The Court of Criminal Appeal held that the conviction could not stand. An indictment for indecent assault should have been preferred and presented to the Grand Jury. The endorsement could not be treated as a substantive indictment for indecent assault. (*R.* v. *Kitching.*)

Lost property: Advertisement—"No questions asked."—A person infringes the provisions of sect. 102 of the Larceny Act, 1861, by advertising that if lost property is returned a reward will be paid and no questions will be asked. Any person, including a police sergeant, can, by civil action, recover the 50*l.* penalty and costs. (*Smith* v. *Stevens,* MacKinnon, J.)

Misappropriation by trustee: Evidence.—If a person is indicted for the misappropriation of shares of which he was trustee, there can be given in evidence against him (1) an affidavit by him, sworn in proceedings against him in the Chancery Division by his co-trustee for an account; (2) admissions made by him in his preliminary examination in bankruptcy. The evidence is not in either case excluded as being "a statement or admission made by any person in any compulsory examination" within the Larceny Act, 1916, s. 43. (*R.* v. *Tuttle,* C. C. A.)

Pigeons: "Taking."—Sect. 23 of the Larceny Act, 1861, makes it an offence unlawfully and wilfully to take any house dove or pigeon under such circumstances as shall not amount to larceny at common law. A Divisional Court held that the Act does not make that an offence which would not, by reason of there being no *animus furandi,* be larceny in respect of some subject-matter other than pigeons. Where a pigeon fancier was admitted to the premises of a neighbouring fancier for the purpose of searching for his own pigeons, and took possession of a bird which he *bonâ fide,* though erroneously, believed was his own, no offence was committed. (*Farey* v. *Welch.*)

CROWN.

Superannuation allowance: Proceedings to enforce.—A civil servant's expectation of a superannuation allowance is not a legal right and cannot be enforced by legal proceedings. (*Nixon* v. *Att.-Gen.*, Clauson, J.)

DANGEROUS DRUGS.

Coca leaves and Indian hemp.—By the Coca Leaves and Indian Hemp Regulations (S. R. & O. 1928, No. 982), and subject to their provisions, the Raw Opium Regulations, 1921, as amended by the Raw Opium Regulations, 1922, 1923 and 1924, are to apply to (a) coca leaves, (b) Indian hemp and resins obtained from Indian hemp and all preparations (except extract and tincture of Indian hemp) of which such resins form the base, as they apply to raw opium.

Consolidated Regulations.—The Dangerous Drugs (Consolidation) Regulations, 1928 (S. R. & O. 1928, No. 981, price 3*d.*), repealed the Dangerous Drug Regulations, 1921, 1922, 1923, and the (No. 3) Regulations, 1923, 1924, 1926 and 1928, and set out the Consolidated Regulations in eighteen regulations and four schedules.

Esters of morphine.—By Order in Council, dated 15th August (S. R. & O. 1929, No. 650), Part III. of the Dangerous Drugs Act, 1920, was applied to esters of morphine and their respective salts and to any preparation, admixture and extract containing any of the said esters.

DEATH DUTIES.

Gift: Expenditure on improvements of wife's house.—A husband, with his wife and children, lived in a house which belonged to his wife. A few months before his death he spent 2,000*l.* in repairs and improvements to the house. It was found as a fact that he did not intend to diminish the value of his estate, but that the object was simply to improve the family house in accordance with their means and station in life, and that there was no reason to believe that he would die soon or necessarily

before his wife. The payment was held not to constitute a gift to the wife so as to be subject to death duties under sects. 38 and 39 of the Death Duties Act, 1921, of New Zealand. (*Finch* v. *Commissioner of Stamp Duties*, P. C.)

Gratuity to school teacher.—A death gratuity, which is paid by the Board of Education under sect. 5 (1) of the School Teachers (Superannuation) Act, 1925, to the personal representative of a deceased school teacher, is liable to estate duty, and it must be aggregated with the rest of the deceased's estate. It is property of which the deceased was, at the time of death, competent to dispose within sect. 2 (1) (a), as read with sect. 22 (2) (a), of the Finance Act, 1894. (*Att.-Gen.* v. *Quixley*, C. A.)

Incidence of estate duty: Successive charitable gifts.—A testator settled a certain fund on A. for life, and directed that after A.'s death certain specified sums should be paid out of the fund to certain charities "in the order of priority in which the names appear in this my will as far as the money will go (No. 1 being paid first, No. 2 next, and so on)." The sums so given were equal to the whole fund. The testator died before the passing of the Finance Act, 1914, which made estate duty payable on the settled fund on the death of the life tenant. Astbury, J., held that the testator intended that each successive charity should receive its full legacy, less legacy duty, before the next charity took anything. Therefore, the estate duty fell on the later charities. (*Re Lomer, Public Trustee* v. *Victoria Hospital for Children.*)

Shares of income bequeathed to persons for life with accruer clause.—A testator directed the income of part of his residue to be paid in certain shares to certain persons for life, with a clause providing for accruer of the income to the survivors on the death of any of the persons named, with an ultimate gift to charity. It was held by Maugham, J., that the property which passed on the death of any such person must be taken to be a share of capital in the residue, and that estate duty must be paid on the value of such share. (*Re Northcliffe, Arnholz* v. *Hudson.*)

Succession duty: Property "situate within the Province" Canadian Government bonds.—By a statute of Alberta succession duty is payable on property "situate within the Province." It was held that duty was payable on bonds issued by the Canadian Government which were in the Province at the deceased's death. The bonds created specialty debts. (*Royal Trust Co.* v. *Att.-Gen. for Alberta*, P. C.)

Undivided shares still pay estate duty as realty.—A. and B. were tenants in common in fee simple of Blackacre before the Law of Property Act, 1925. A. died after the Act. Rowlatt, J., held, following *Re Wheeler* (1929 "Year Book," 1—82), that his share must pay estate duty as real estate. The trust for sale introduced by the Act does not cause the share to pay duty as personal estate. (*Att.-Gen.* v. *The Public Trustee.*)

DRAINAGE.

Drainage authorities, election of.—As to qualification of electors, reference must be made to the Land Drainage Act, 1929, which was passed in consequence of the Local Government Act, 1929, having abolished the assessment of agricultural property to rates. Under the Acts relating to the drainage of land and the protection of land against flooding, the qualification of electors is, as a rule, based on rateable value, though in a few cases it is based, not on this, but on appearance in the rate book. The Local Government Act, 1929, thus upset the existing qualifications, and the Drainage Act, 1929, deals with the resulting situation. As regards electors whose qualification depends on rateable value, the matter is dealt with by sect. 1 (1) of the Act. This provides that any enactment (including any public, general, local or private Act or order or award thereunder) relating to the drainage or protection of land from flooding, which requires any matter other than the amount of any drainage rate to be determined by reference to the value of property as ascertained for the purposes of general rates or drainage rates, shall, as from October 1st, 1929, be read as requiring the reference to be (1) in the case of property assessed under Schedule A of the Income Tax Act, 1918, to gross annual value for income tax

purposes (any necessary apportionment being made by a Court of summary jurisdiction); and (2) in the case of property not so assessed, to the gross annual value as determined by a Court of summary jurisdiction.

The words "other than the amount of any rate" should be noted. The sub-section has no effect on the incidence of drainage rates, as might be thought on a first perusal—it merely substitutes a new method of assessment of rateable value for the purposes of electoral qualification.

Electors whose qualification depends on inclusion in the rate book (and who, if agricultural electors, were, as a result of the Local Government Act, 1929, disfranchised) are dealt with by sect. 1 (2), which substitutes for "entry on the rate book," "entry on a list of owners and occupiers liable to drainage rates kept by the drainage authority."

EASEMENT.

Quasi-easement: No reservation in vendor's favour.—The rule in *Wheeldon* v. *Burrows* (1879), 12 Ch. D. 31—that the law will not usually imply the reservation of an easement in the vendor's favour—was followed and the exceptions to it much discussed by the Court of Appeal in *Aldridge* v. *Wright*.

Right of way: No implied reservation.—The common owner under a long lease of two tenements, A. and B., assigned his interest in tenement A. to X. without reserving any rights over tenement A. Subsequently, he assigned his interest in tenement B. to Y. Both before and after the assignment of tenement A., the occupier of tenement B. had used a way across tenement A. to convey refuse and coal to and from a passage leading to a street. It was held by a Divisional Court that, the way not being a way of necessity, no reservation could be implied in favour of tenement B. The Court preferred *Wheeldon* v. *Burrows* (1879), 12 Ch. D. 31, to *Thomas* v. *Owen* (1887), 20 Q. B. D. 225. (*Aldridge* v. *Wright*.)

ECCLESIASTICAL LAW.

Chancel, repair of.—The impropriator of an impropriate rectory in receipt of the profits thereof is personally liable for

the repair of the chancel of the parish church although at the time of the conveyance to him of the lands forming part of the rectory he had no notice of the liability. (*Hauxton Parochial Church Council* v. *Stevens*, heard in the Ely Consistory Court.)

Dilapidations.—Numerous alterations in the Ecclesiastical Dilapidations Measure, 1923, are effected by the Ecclesiastical Dilapidations (Amendment) Measure, 1929.

Perpetual curate: Right of presentation—Church Council.—Where, before the Parochial Church Councils (Powers) Measure, 1921, under a grant from the Dean and Chapter of the diocese, the right to nominate and elect a perpetual curate of a parish was vested in the mayor and senior part of the parishioners, the right of presentation is now vested in the Parochial Church Council. Sect. 4 (1) of the Measure applies, since the right of presentation was formerly vested in the parishioners within the meaning of that section. (*Re Litchfield Cathedral Grant, Chapel-en-Frith Church Council* v. *Bagshawe*, Clauson, J.)

Registers and records.—The Parochial Registers and Records Measure, 1929, has made provision for the better care of parochial registers and other records in ecclesiastical custody.

By sect. 1, the bishop may direct that register books of baptisms, marriages and burials in the custody of any minister in his diocese shall be kept in a proper chest or safe, that the chest or safe shall be repainted or repaired, and that the books shall be rebound or repaired. The expense will have to be borne by the Parochial Church Council.

By sect. 2, the bishop may establish a diocesan record office, in which, by sect. 3, any minister of the diocese may, with the consent of the bishop and Parochial Church Council, deposit any register books not in actual use, or any deeds or documents of value as historical records or as evidence of legal rights, and in which, by sect. 4, the bishop may order register books not in actual use and such deeds and documents as aforesaid to be deposited. The bishop's order may be enforced by application to the County Court (sect. 10). Provision is made by sect. 11 for searches of and certificates of entries in deposited parochial registers.

To remove doubts, sect. 10 (3) declares that the title to any register books in the possession of a minister or of a minister and churchwardens cannot be assigned whether for value or otherwise.

The Representation of the Laity Measure, 1929, substitutes new rules as to the representation of the laity for those contained in the Schedule to the Constitution as amended by the Representation of the Laity (Amendment) Measure, 1922. Many alterations are made, mainly in the direction of elaboration and classification of the rules, without any great change in substance. The matters dealt with are the qualification for election to the Parochial Church Council, ruri-decanal conference, diocesan conference and House of Laity; the electoral roll; the annual parochial church meeting and special parochial church meetings; Parochial Church Councils; elections to the Council, &c.

The Westminster Abbey Measure, 1929, gives the Ecclesiastical Commissioners, after consultation with the Dean and Chapter of Westminster, and with the approval of the Visitor of the Abbey, power to make schemes for re-apportioning the income of the Dean and Chapter. It also continues the suspension of the canonry in Westminster Abbey.

EDUCATION.

Non-attendance: Reasonable excuse.—The three excuses set out in sect. 49 of the Education Act, 1921, are not the only reasonable excuses for non-attendance at school. A child, aged fourteen, was certified as deaf in pursuance of sect. 55 (3) of the Education Act, 1921. The certified school for deaf children in the particular area was a residential school twelve miles away from the child's home. The parent sent the child to two non-residential schools, but the child was prevented from remaining there by pressure from the local education authority. The justices held that there was reasonable excuse for non-attendance, and the decision was upheld by a Divisional Court. (*London County Council* v. *Maher*.)

Teachers' superannuation.—Schemes have been made to give effect to arrangements made with Northern Ireland (S. R. & O. 1929, No. 432) and Jersey (S. R. & O. 1929, No. 210).

EGGS.

Grading and marking.—See *ante*, p. 7.

Imported eggs.—Article 8 of the Sale of Food Order, 1921 (S. R. & O. 1921, No. 1305), which related to the sale of imported eggs, has been revoked. (S. R. & O. 1929, No. 283.) *See now under* MERCHANDISE MARKS.

ELECTRICITY.

Compensation for deprivation of employment.—The Electricity (Supply) Act, 1928, has amended sect. 16 of the Electricity (Supply) Act, 1919, by striking out the words "before the said eighth day of May," so that officers or servants of an electricity undertaking deprived of their employment by a transfer of the undertaking under that Act, or the adoption of a scheme or agreement or arrangement under that Act, can claim compensation even though their employment began after the 8th May, 1919.

Joint authority's powers.—A joint authority appointed under the Electricity (Supply) Act, 1919, cannot apply their funds in the promotion of a Bill in Parliament for the purpose of transferring to themselves the powers of local authorities to acquire electricity undertakings in their district, to extend such district, and to confer further powers on the joint authority. (*Att.-Gen.* v. *London and Home Counties Joint Electricity Authority*, Astbury, J.)

Nuisance.—The owners of land in the neighbourhood of an electricity generating station, erected under a special Act of Parliament, have a right to obtain damages for a nuisance caused thereby, unless the special Act exempts the undertakers from liability. (See clause 81 of the Schedule of the Electric Lighting (Clauses) Act, 1899.) Even though the generating station is erected on land named in the special Act, and is worked without negligence, the undertakers are liable for nuisance, unless relieved by the special Act. (*Farnworth* v. *Manchester Corporation*, C. A., affirmed H. L. *sub nom. Manchester Corporation* v. *Farnworth*.)

ESTOPPEL.

Consent order.—An order by consent is binding unless and until it has been set aside in proceedings instituted for that purpose. (*Kinch* v. *Walcott*, P. C.)

EVIDENCE.

Domicil, change of: Declarations.—Declarations by a man as to his intention may be evidence to prove a change of domicil. The House of Lords said, in *Ross* v. *Ellison or Ross*, that declarations as to intention are rightly regarded in determining the question of domicil, but the declarations require examining by considering the person to whom, the purpose for which and the circumstances in which they are made. (See also *Veith* v. *Veith, ante*, p. 8.)

EXECUTOR.

Business: Competing with testator's business.—If a testator directs the executors and trustees of his will to carry on his business, one of them cannot himself start a competitive business. (*Re Thomson, Thomson* v. *Allen*, Clauson, J.)

EXPLOSIVES.

Liquid oxygen.—The Liquid Oxygen Explosives Order, 1928 (S. R. & O. 1928, No. 1045), exempts the manufacture of liquid air or oxygen from the Explosives Act, 1875, on certain conditions there set out.

FACTORY AND WORKSHOP ACT, 1901.

Cotton cloth factories.—The Factory and Workshop (Cotton Cloth Factories) Act, 1929, empowered the Secretary of State to make regulations to give effect to the recommendations contained in the report dated the 23rd January, 1928, of the committee appointed on the 5th November, 1924, to consider and report whether, and, if so, what, modifications of the existing statutory regulations governing the use of artificial humidity in cotton cloth factories are desirable and practicable. Sect. 95 of the Factory and Workshop Act, 1901 (which relates to penalties for non-compliance with the provisions of that Act as to cotton cloth factories),

is made to apply to non-compliance with regulations made under this Act, and "24 months" is substituted for "12 months" in that section, so that the occupier of a cloth factory will be guilty of an offence if he repeats a contravention of or non-compliance with a provision of the Act, or a regulation within twenty-four months after receiving a notice from the inspector. (Sect. 1.)

The Act also provides (sect. 2) that a local authority is not to approve of any plans or sections relating to the erection or conversion of a building proposed to be used as a cotton cloth factory unless they are accompanied by a certificate from the superintending inspector of factories for the division, certifying that the building will not contravene the regulations in force under this Act.

The Act also repeals sects. 90, 91, 92 and 94, and the Fourth Schedule of the Act of 1901, so far as they relate to cotton cloth factories, and the Factory and Workshop (Cotton Cloth Factories) Act, 1911. (Sect. 3.)

For Regulations under the Act, see the Cotton Cloth Factory Regulations. (S. R. & O. 1929, No. 300, price 2*d*.)

Oil cake.—See the Oil Cake Welfare Order, dated July 5th, 1929, for securing the welfare of the workers employed in the manufacture of oil cake, extracted meal and compound cake. (S. R. & O. 1929, No. 534.)

Sect. 105.—Sect. 105 of the Factory and Workshop Act, 1901, under which the provisions of the Act with respect to regulations for dangerous trades and fines in case of death or injury are applied to premises on which mechanical power is temporarily used for the purpose of the construction of a building, covers the case where the mechanical power, though on the premises, is not operated on a particular day. If the mechanical power is on the premises and intended to be further operated, it is in temporary use within the meaning of the section. (*Barnett* v. *Caxton Floors, Ltd.*, Div. Ct.)

FERRY.

Private Act: Exclusive right or not.—A company was authorised by the Bournemouth-Swanage Motor Road and Ferry Act,

1923 (13 & 14 Geo. 5, c. lxxxviii.), to construct a motor road on the Studland side of the mouth of Poole Harbour, and to establish, maintain, work and use a ferry across the mouth of the harbour. It was held by the Court of Appeal that the Act did not create an exclusive right of ferry, so as to entitle the company to stop persons who were ferrying passengers and bicycles across at the passing of the Act from continuing to do so. Clear and unequivocal words are necessary to derogate from common right. (*Bournemouth-Swanage Motor Road and Ferry Co.* v. *Harvey and Sons.*)

FOOD AND DRUGS.

Artificial vinegar sold as table vinegar.—It is an offence under sect. 6 of the Sale of Food and Drugs Act, 1875 (now sect. 2 of the Food and Drugs (Adulteration) Act, 1928), if artificial vinegar is sold on a demand for table vinegar. (*Preston* v. *Jackson,* Div. Ct.)

GAMING AND WAGERING.

Betting duty.—The duty chargeable under sect. 15 of the Finance Act, 1926, on bets made with a bookmaker was abolished as from the 16th April, 1929, by sect. 2 of the Finance Act, 1929. It was held in *Att.-Gen.* v. *Luncheon and Sports Club, Ltd.*, H. L., not to be payable in respect of wagers on horse races made by members of a proprietary club by means of the totalisator and pari-mutuel.

Bookmakers, loan to, recovery of.—A loan to a firm of bookmakers, secured by a deed charging the assets of the partnership, is recoverable, unless the borrowers can show that it was "knowingly lent or advanced for betting" within the Gaming Acts of 1710 and 1835. The loan might have been required for other purposes of the business, which is quite a legitimate one, *e.g.*, to pay rent and salaries. (*Humphery* v. *Wilson,* C. A.)

Horse-racing: Entrance fees.—The defendant entered a horse for two races at Newmarket, and agreed to pay an entrance fee in respect of each. The Jockey Club agreed, in certain events, to hold the race and pay the defendant a prize if his horse won. The Court of Appeal held, reversing Clauson, J.

(1929 Year Book, 1—100), that the Gaming Act, 1845, did not invalidate the contract. Lawrence, L.J., as regards one race, dissented from the other members of the Court, holding that the special terms of the contract fell within the Gaming Act, and that the plaintiffs should not be allowed to recover in respect of that race. (*Ellesmere* (*Earl of*) v. *Wallace*.)

Money lent to play cards.—If money is lent in England to enable the borrower to play cards, and the borrower gives his cheque to secure payment, the loan cannot be sued for. The Gaming Act, 1835, which prevents the lender from enforcing payment of the cheque, also prevents him from suing on the original consideration. (*Carlton Hall Club* v. *Laurence*, Div. Ct.)

Whist drive.—If a club organises a progressive whist drive with prizes provided by entrance fees, there is committed the offence of keeping a common gaming-house. Whist, as played in the circumstances, is not a game of skill, and is an unlawful game. (*R.* v. *The O.K. Social and Whist Club, Ltd.*, Div. Ct.)

GAS.

The Gas Undertakings Act, 1929, has amended the Gas Regulation Act, 1920, and may be cited with that Act as the Gas Undertakings Acts, 1920 and 1929. The chief noteworthy features are: (1) The Board of Trade is empowered to make orders increasing the authorised amount of share capital or loans. (2) A fresh provision deals with the authorised amount of loans on mortgage or secured by debentures. (3) There is an increase of the authorised amount of the reserved fund or special purposes fund. (4) The powers of purchasing residual products are extended. (5) Provision is made for the supply of gas to premises outside the undertakers' limits of supply. (See the Gas (Bordering Premises) Rules (S. R. & O. 1929, No. 531), with respect to applications under this provision.) (6) Where undertakers supply more than a certain quantity of gas, provision is made for charges on the basis of British thermal units. (7) The power of the Board of Trade, under the Gas Regulation Act, 1920, to make special orders is extended.

GIFT.

Imperfect gift of realty: Donee appointed executor.—The principle of *Strong* v. *Bird* (L. R. 18 Eq. 315) applies to realty. Therefore, if A. makes an imperfect gift of freeholds to B., *e.g.*, by handing to him the title deeds without conveyance, and B. is one of A.'s executors, the gift is perfect. No assent from the executors is required in such a case. (*Re Comberbach, Saunderson* v. *Jackson*, Courthope Wilson, V.-C.)

HIGHWAY.

Obstruction, action for.—In an action by one owner of premises adjoining a highway against another for obstruction, the principles applicable are:—The public has the right of free and unobstructed passage over the whole of a public highway. The owner of premises adjoining the highway is entitled to make a reasonable use of the highway for the purposes of access and of loading and unloading goods. But the right of the public is a higher right, and if the user of the occupier, though reasonable so far as the particular business carried on by him is concerned, in fact causes a serious obstruction to the public, the private rights of the occupier must yield to the public rights. This law applies to an action by the Attorney-General on behalf of the public. It also applies to an action brought in his own name by a person occupying premises on the highway, but the plaintiff must prove that he has sustained particular damage, and that such damage is direct and substantial. (*Vanderpant* v. *Mayfair Hotel Co., Ltd.*, Luxmoore, J.)

HOPS.

Duty.—Sect. 4 of the Finance Act, 1929, continues, for a further period of four years, the customs duties charged by sect. 7 of the Finance Act, 1925, on hops, or extracts, essences and other preparations made from hops, and on beer; so that the duties will continue to be charged till the 16th August, 1933. But, as from the 16th August, 1929, hop oil will cease to be chargeable with duty as a preparation made from hops, but will pay a duty of 20*s.* per ounce. The additional excise drawback pay-

able under sect. 7 (3) of the Finance Act, 1925, in respect of beer will continue to be allowed for four years more, *i.e.*, till the 16th November, 1933.

The provisions of sect. 98 of the Customs Consolidation Act, 1876, which relate to the charging of duty on the quantity of goods ascertained by weight, measure or strength at the time of actual delivery thereof, are to apply to hops when cleared from a warehouse for home use, as they apply to the specially excepted goods mentioned in that section.

HOUSE OF LORDS.

Additional Lord of Appeal.—The Appellate Jurisdiction Act, 1929, s. 2, authorised His Majesty to appoint an additional Lord of Appeal in Ordinary, bringing the number up to seven.

HOUSING.

Contributions.—The Housing Acts (Revision of Contributions) Order, 1928 (S. R. & O. 1928, No. 1039), has been amended by the Housing (Revision of Contributions) Act, 1929. The effect of the Order was to abolish, as from 1st October, 1929, what is known as the Chamberlain subsidy, and to reduce what is known as the Wheatley subsidy. The effect of the Act is to continue these subsidies unaltered. The contribution per house is 7*l.* 10*s.*, or, if the house is situated in an agricultural parish, 11*l.*, payable annually for a period of forty years.

Owner.—Litigation having arisen in reference to the estate of a person deceased, and the estate including certain house property, the solicitor to the administratrix engaged a rent collector to collect the rents, with instructions to pay them to the solicitor only. It was held that the solicitor thereby became "owner" within the Housing, Town Planning, &c. Act, 1919 (now represented by the Housing Act, 1925, s. 3), so as to become personally liable for the cost of work done by the local authority under the Act. (*Watts* v. *Battersea Corporation*, C. A. affirming Div. Ct., *ante*, 1—106.)

HUSBAND AND WIFE.

Separation deed: Maintenance—Subsequent divorce.—Where, in a deed of separation, a husband agrees to pay his wife a yearly sum for maintenance, the wife can enforce the covenant although the marriage is subsequently dissolved on her petition. The husband contended that it was an implied term of the deed that it should operate only so long as the parties were husband and wife, and that *Charlesworth* v. *Holt* (1873), L. R. 9 Ex. 38, on which the wife relied, would have been decided differently if heard now for the first time, in view of the doctrine of frustration established by *Krell* v. *Henry*, (1903) 2 K. B. 740, and *Tamplin Steamship Co.* v. *Anglo-American Petroleum Products Co.*, (1916) 2 A. C. 397. But the Court of Appeal held, affirming Horridge, J., that *Charlesworth* v. *Holt* had stood so long that it ought not to be overruled now. (*May* v. *May*, C. A. Cp. *Hyman* v. *Hyman*, *post*, p. 115.)

INCOME TAX.

Accumulations during minority: Return of tax—Settled fund.—A testator settled trust funds on such of his children as should attain twenty-one, or, being daughters, should attain that age or marry, the share of a daughter being settled on her for life with a general testamentary power of appointment in her favour and in default of any appointment over. A daughter having attained twenty-one, applied to and obtained from the Board of Inland Revenue, under the Income Tax Act, 1918, s. 25, repayment of income tax deducted in respect of the income of her share accumulated during minority. Maugham, J., held that the trustees of the settlement were not entitled to have the sum so repaid handed over to them as an accretion to capital. Although the accumulations themselves would be an accretion to capital, the right given to the daughter by the Income Tax Act, 1918, s. 25, was a purely personal one, and the moneys received thereunder were hers absolutely. (*Re Fulford, Fulford* v. *Hyslop.*)

Case stated.—The Commissioners of Income Tax cannot be compelled to state a case under sect. 149 (1) (b) of the Income Tax

Act, 1918, if no written notice was given within twenty-one days after their determination. The written notice is a condition precedent under the section. (*R.* v. *Commissioners of Income Tax for Edmonton, Ex parte Thompson*, Div. Ct.)

Charity: Simplified Spelling Society.—A society formed to make spelling more simple is not exempt from income tax; it is not established for charitable purposes. (*Hunter Trustees* v. *Inland Revenue Commissioners,* Rowlatt, J.)

Company: Transfer of control from abroad—Three years' average.—Where the control of a company, which had been carrying on business abroad since 1919, was, in 1925, transferred from abroad to the United Kingdom, so that the company became assessable to income tax, it was held by the Court of Appeal that the assessment must be made on the three years' average. The transfer of the control to the United Kingdom did not constitute the setting up and commencement of a trade within the meaning of Rule 1 (2) of the Rules applicable to Cases 1 and 2 of Schedule D of the Income Tax Act, 1918. (*Fry* v. *Burma Corporation, Ltd.*)

Corporation: Assisted housing scheme—Interest on local bonds—Exchequer subsidy.—See *Birmingham Corporation* v. *Inland Revenue Commissioners,* C. A.

Deduction: Hospital subscriptions.—If the Special Commissioners of Income Tax refuse to allow traders to deduct, as a trade expense, subscriptions to a hospital at which their employees are frequently treated, the Court will not interfere. The question whether the subscriptions were given with the view to obtaining a staff that would earn profits, or whether they were given merely because the staff had in fact been treated at the hospital, is a question of fact for the Special Commissioners. (*Bourne and Hollingsworth, Ltd.* v. *Ogden,* Rowlatt, J.)

Deduction: Loss on loan to client.—A firm of Writers to the Signet advanced money to a company, for which they acted as law agents, in the hope of securing future profitable business. The money was lost. The loss was not allowed to be debited to profit and loss account for income tax purposes. The loss arose out of

a separate venture from that of Writers to the Signet. (*Hagart and Burn-Murdoch* v. *Inland Revenue Commissioners*, H. L.)

Double taxation: Relief.—A company, controlled from the United Kingdom, earned most of its income in oversea dominions, where it was subject to dominion income tax. On transmission to the United Kingdom, part of the income was applied in paying interest on debentures, from which United Kingdom income tax was deducted by the company before payment. The company was held not to be entitled to relief against double taxation in respect of the whole of the income which was received in the United Kingdom after payment of dominion income tax. The "income," for the purposes of the relief provided by sect. 43 of the Finance Act, 1916, and later by sect. 55 of the Income Tax Act, 1918, and sect. 27 of the Finance Act, 1920, cannot be construed as "income, less charges." (*Inland Revenue Commissioners* v. *Dalgety & Co., Ltd.*, C. A.)

Insurance of timber against fire: Money received by insured.—A timber merchant must include in his income tax return the whole of a sum of money received from an insurance company in respect of timber destroyed by fire, although the money received exceeds the amount at which the timber is valued in his books. (*Gliksten & Son, Ltd.* v. *Green*, H. L.)

Insurance: Sums paid under endowment policy.—A. effected an assurance with the Clergy Mutual Assurance Society for an annuity for his son, under which, in consideration of a premium to be paid for each of the six years 1912 to 1917, the society agreed to pay an annuity for each of the seven years 1920 to 1926. The Court of Appeal held that A. was not assessable to income tax in respect of the part of the annuity representing capital. The essence of the matter was that he recovered his capital with interest. (*Perrin* v. *Dickson.*)

Letting of offices and flats: Profits assessable.—The owner of a block of buildings let out as unfurnished offices or flats is not liable to be assessed under Schedule D of the Income Tax Act, 1918, in respect of the difference between the gross value of the buildings, upon which he pays income tax under

Schedule A, and the rents actually received from the tenants. There is no power to superimpose on the tax on the annual value under Schedule A a tax on the margin of rents which the Crown would like to tax if it were entitled to do so under Schedule D. (*Salisbury House Estate, Ltd.* v. *Fry,* C. A.)

To the same effect is *City of London Real Property Co., Ltd.* v. *Jones,* C. A.

Profit on purchase and sale of property.—L., in August, 1925, entered into option agreements for the purchase of rubber estates, and in October, 1925, transferred his rights, making a net profit of 600*l.* The transactions were carried out by an agent, L. taking no part in the negotiations for purchase or sale of the rights. A. was held not to be assessable to income tax in respect of the 600*l.* The transaction had been found not to be a concern in the nature of a trade, and, as the transaction was an isolated transaction, the profits were not in the nature of income, but an accretion of capital value. (*Leeming* v. *Jones,* C. A.)

"Public school."—Where a school is run by a company the fact that preference shareholders are entitled to receive dividends not exceeding 4 per cent. on their shares prevents the school from being a "public school" for the purpose of claiming the allowance under Rule 1 (c) of No. VI. of Schedule A of the Income Tax Act, 1918. To be a public school, no private person must have an interest and no profit must be in contemplation of its founders or managers. (*Ereaut* v. *Girls' Public School,* C. A.)

Rates.—These are laid down by sect. 1 of the Finance Act, 1929. The standard rate of income tax for the year 1929—30 is 4*s.* in the £. The sur-tax for incomes over 2,000*l.* is to be paid at the same rates as were charged for 1928—29. (See "Law Notes" Year Book for 1929, *ante,* 1—114.) All the enactments relating to income tax for 1928—29 are to have effect with regard to income tax for 1929—30, except sects. 29 (3) and 32 (2) of the Finance Act, 1926, and sect. 28 of the Finance Act, 1927, which were temporary in their application.

Super-tax: Sums expended in upkeep of settled land.—A. was tenant for life of land under a will. The will made provision

for payment by the trustees out of the income of the testator's estate for the upkeep of the land. Income tax was paid by the trustees on the income from the deceased's estate. The tenant for life was held assessable to super-tax in respect of sums expended by the trustees in the upkeep of the land. The case was governed by *Drummond* v. *Collins,* (1915) A. C. 1011. (*Sutton* v. *Commissioners of Inland Revenue,* C. A.)

War Loan: Widow—Income of year of husband's death.—A widow was assessed on 2,102*l.* 10*s.* for the year ending the 5th April, 1922, being income on War Loan Stock, the tax on which was not deducted at the source. In the preceding year the above income was deemed to be that of her husband, who died on the 10th April, 1921, and he was assessed in respect of it. The Court of Appeal, reversing a decision of Rowlatt, J., held that she was rightly assessed. Proviso 1 to Rule 16 of All Schedules Rules to the Income Tax Act, 1918, only causes the property of a married woman living with her husband to be deemed the property of the husband for the purposes of collection. (*Leitch* v. *Emmott,* C. A.)

Since the Finance Act, 1922, which came into force on the 20th July, 1922, the question in this case could not arise, for by sect. 17 (2) (1) (a), the widow would be taxed on her profits during the year of assessment as being the first year in which the profits arose in her favour.

INFANT.

Exchange of goods.—If an infant exchanges a motor bicycle for a motor car, he cannot afterwards claim the return of the motor bicycle on the ground that the contract was void. The contract is void under the Infants' Relief Act, 1874, but as there has not been a total failure of consideration, the infant cannot recover. (*Pearce* v. *Brain,* Div. Ct.)

Maintenance.—Income cannot be used for an infant's maintenance under sect. 31 of the Trustee Act, 1925, when the property consists of a settled legacy, in which the infant has a contingent life interest, and there is a direction to accumulate the income and add it to capital until the contingency happens.

Owing to the direction to accumulate, the trust creating the contingent interest does not carry the intermediate income. (*Re Reade-Revell, Crellin* v. *Melling,* Clauson, J.)

INSURANCE.

Deposit: Payment out on transfer of life insurance business.—Where an assurance company has, with the Court's sanction, duly transferred all its life business to another assurance company, all its liability to its policy holders is completely discharged, and the Court can order payment out of the deposit money. (*Re United British Insurance Co., Ltd.*, Eve and Maugham, JJ.)

Industrial assurance.—Some amendments with regard to industrial assurance have been made by the Industrial Assurance and Friendly Societies Act, 1929.

Sect. 1 extends the purposes for which registered friendly societies and industrial assurance companies may issue policies of assurance. They may insure money to be paid to the member or person assured on the duration for a specified period of the life of his parent, child, grandparent, grandchild, brother or sister, either with or without provision for the payment of money in the event of the death of any such person before the expiration of the period. But there is a proviso that no such society or company shall insure or pay on the death of any person under such a policy issued after the commencement of the Act any sum of money exceeding a reasonable sum for funeral expenses.

Such endowment policies issued before the Act are validated by sect. 4.

Sect. 2 provides that, for the purpose of calculating the maximum sum which may be insured or paid under sect. 1 above, or under sect. 62 of the Friendly Societies Act, 1896 (which limits the amount payable on the death of a child), no account shall be taken of any repayment of premiums paid in respect of any endowment policy; and that sects. 63 to 66 of the Friendly Societies Act, 1896, and sect. 4 of the Industrial Assurance Act, 1923, shall not apply as respects any such repayments.

Sect. 3 gives the owner of certain endowment policies the right to surrender the policy, and to claim either a free paid up policy

or payment of a surrender value calculated in accordance with the rules in the schedule. The section applies to policies which come within sect. 1 above and any other endowment policy issued on the life of a child under ten years of age. Certain duties are cast on collecting societies and industrial assurance companies in connection with such policies.

Marine: Barge sinking through general debility.—A barge was insured under a policy of marine insurance against loss due (*inter alia*) to lightning, stranding or sinking. It sank through general debility. The underwriters were held not liable. Since the policy did not expressly provide for the insurance of ordinary wear and tear, the Marine Insurance Act, 1906, s. 55, excluded that risk. (*Wadsworth Lighterage and Coaling Co., Ltd.* v. *Sea Insurance Co., Ltd.*, C. A.)

Marine: "Warlike operation."—In May, 1918, a vessel was part of a convoy. She was not herself engaged in a warlike operation, but was carrying a commercial cargo. Owing to a breakdown of her steering apparatus she collided with another ship engaged in carrying military stores. The resulting loss was held not to be covered by insurance against loss due to "warlike operation." The loss was not due to "warlike operation" merely because the other vessel was engaged in a warlike operation at the time. The direct cause of the loss was the breakdown of the steering apparatus, and this, as being the direct cause of the disaster, was all that could be looked at. (*Clan Line Steamers, Ltd.* v. *Board of Trade*, H. L.)

Misstatement: Proposal form filled up by agent.—If A. applies to the agent of an insurance company, and tells the agent the true facts, but the agent fills up the proposal form incorrectly, A. cannot enforce the policy. The knowledge of the agent cannot be taken as the knowledge of the insurance company. (*Newsholme Brothers* v. *Road Transport and General Insurance Co., Ltd.*, C. A., following *Re Arbitration between Biggar and Rock Life Assurance Co.*, (1902) 1 K. B. 516, and distinguishing *Bawden* v. *London, Edinburgh and Glasgow Assurance Co.*, (1892) 2 Q. B. 534.)

Motor car: "Private hire."—The plaintiff wishing to insure a car, whether used for his own pleasure or let out on hire, instructed brokers to effect the insurance. The brokers filled up a proposal form supplied by the defendants' agent, who said it would cover private pleasure as well as private hire. The form stated that the car would be used for "private hire," which the broker read as meaning "principally so used." The policy issued by the defendants covered "private pleasure or private hire," but incorporated the terms of the proposal. Roche, J., held the defendants liable for loss while the car was being used for private pleasure (1) because, there being an inconsistency between policy and proposal, the policy prevailed, and (2) because evidence was admissible to show the statement of defendants' agent that "private pleasure" user would be covered, and that the defendants were estopped from alleging otherwise. (*Kaufman* v. *British Surety Insurance Co., Ltd.*, Roche, J.)

Recovery of premiums on over-insurance under an industrial insurance policy.—Where a father effects an industrial insurance on his child's life for an amount in excess of the statutory limit he can recover the premiums paid. (*Re Thomas Hirst and the Liverpool Victoria Friendly Society,* Rowlatt, J.)

Valuation: Prospective appreciation.—If the assured bases his valuation of the property assured not on its present value, but on its prospective appreciation, he must disclose to the insurer that his valuation is speculative and not immediate. Failure to disclose this makes the policy void against the assurer, even in the absence of conscious and deliberate over-valuation. (*Hoff Trading Co.* v. *Union Insurance Society of Canton,* C. A.)

INTEREST.

Sum certain contingently payable.—The Court cannot allow interest under sect. 28 of the Civil Procedure Act, 1833, if the money is payable at a time fixed by reference to a contingent event which may never happen, and the amount payable is capable of ascertainment only if and when the event happens. It is not a sum certain payable at a time certain. (*Maine and New Brunswick Electrical Power Co.* v. *Hart,* P. C.)

INTERNATIONAL LAW.

Diplomatic privilege.—If a person entitled to diplomatic privilege, by his Government's direction, does not plead this privilege in an action successfully brought against him for damages for injury caused by his motor car, he can nevertheless recover on a policy under which he is insured against third-party risks. A person entitled to ambassadorial privilege may incur legal liability even though it is impossible to enforce the claim by action unless the privilege be waived. Moreover, the person so liable is bound to waive his privilege if so directed by the Government whose representative he is, and in so doing does not "act to the prejudice of the company's interest" within the meaning of a prohibitory condition in the policy. (*Dickinson* v. *De Solar Mobile and General Insurance Co., Ltd.*, Lord Hewart, C.J.)

Russia: Soviet decree confiscating property.—Property of the plaintiff was seized by revolutionaries in Russia and placed in a State museum, the plaintiff herself having fled from Russia as a refugee. The Court of Appeal held that a purchaser from the Soviet obtained a good title, since the Soviet Government is recognised by this country as the Russian Government and Soviet decrees as effective Russian law. Under decrees nationalising (1) property actually in State museums, and (2) property of refugees, the Soviet became owners of the property in question, and were able to make a title to their purchaser. (*Princess Olga Paley* v. *Weisz.*)

IRISH FREE STATE.

Compensation to retired and discharged civil servants.—Disputes having arisen regarding the amount of compensation to be given to retired and discharged civil servants on the establishment of the Irish Free State, an agreement was made on the 27th June, 1929, between the Government of the United Kingdom and the Government of the Irish Free State. This agreement was confirmed by the Irish Free State (Confirmation of Agreement) Act, 1929.

Royal Irish Constabulary: Compensation.—See *Egan* v. *Att.-Gen.*

JUDICIAL COMMITTEE.

Additional judges.—The Appellate Jurisdiction Act, 1929, s. 1, gave His Majesty power to appoint two additional members of the Judicial Committee for Indian matters; and sect. 2 authorised the appointment of an additional Lord of Appeal in ordinary, bringing the number up to seven.

Fee on appointment of member.—The Crown Office Fees (Judicial Committee) Order, 1929 (S. R. & O. 1929, No. 132/L. 3, price 1*d.*), prescribed 25*l.* as the fee to be taken in the office of the clerk of the Crown in Chancery on the letters patent appointing a member of the Judicial Committee of the Privy Council.

JURY.

Insurance, disclosure of, to jury: Discharge of jury.—Where in an action for damages for personal injuries the fact that the defendant is insured is disclosed to the jury, the judge in his discretion may discharge the jury and order a new trial. (*Grinham* v. *Davies,* Div. Ct.)

JUSTICES.

Case to be stated: Informant's right.—Where an information for a criminal offence is dismissed by the justices, the informant is entitled to ask for a case to be stated. (*R.* v. *Newport* (*Salop*) *Justices, Ex parte Wright,* Div. Ct.)

Chatham and Sheerness.—See the Chatham and Sheerness Stipendiary Magistrates Act, 1929, which was passed to prevent difficulties from arising in the event of the office of stipendiary magistrate for Chatham and Sheerness not being filled.

Disqualification from interest.—A magistrate is not incapacitated, on the ground of interest, from dealing with a wife's summons for a maintenance order because he belongs to the same trade union as the husband. A magistrate is not incapacitated from dealing with a matter not affecting trade union interests merely because he is a member of the same union as one of the parties. (*Stevens* v. *Stevens,* Div. Ct.)

Metropolitan police magistrates: Superannuation.—The Police Magistrates (Superannuation) Act, 1915, so far as it relates to metropolitan police magistrates, has been amended by the Police Magistrates Superannuation (Amendment) Act, 1929.

Summons: Copy—Service.—If the copy of a magistrate's summons served on the respondent does not show that the summons was signed by the magistrate, this is not a fatal defect. The case falls within the Summary Jurisdiction Act, 1848, s. 1, which provides that "no objection shall be taken or allowed to any information, complaint, or summons, for any alleged defect therein in substance or in form." (*R.* v. *Hay Halkett, Metropolitan Police Magistrate, Ex parte Rush,* Div. Ct.)

LANDLORD AND TENANT ACT, 1927.

Amendment of Rules and Forms.—The County Court (No. 1) Rules, 1929 (S. R. & O. 1929, No. 362/L. 9, price 2*d.*), have amended Ord. Lb. r. 31, of the County Court Rules, and Forms 466 and 468. See *infra.*

Business premises: Notice claiming compensation.—A notice claiming compensation under the Landlord and Tenant Act, 1927, may be effective though served before the coming into operation of the Act. (*Dobbin* v. *Ogden,* C. A.)

Covenant not to make improvements without lessor's consent.—Sect. 19 (2) of the Landlord and Tenant Act, 1927 (which subjects a covenant in a lease forbidding improvements without the lessor's consent to a proviso that consent shall not be unreasonably withheld), was held by Rowlatt, J., to apply where it was proposed to make two openings in the party wall dividing the demised premises from adjoining premises in the tenant's occupation. The question was whether what was proposed was an alteration by way of improvement or a breach of a provision in the lease against cutting main walls. His Lordship thought that the mere fact of an aperture being made was not a cutting, but an improvement, and was comparable to enlarging a window or carrying a pipe through a wall. He held that what was proposed was an improvement to which consent could not be unreasonably withheld. (*Lilley & Skinner, Ltd.* v. *Crump.*)

Form of præcipe for summons and of particulars of claim.—In Part I. of the Appendix to the County Court Rules, in Form 466, after the words "Solicitors Costs," and at the beginning of Form 468 before the words "Date of lease or agreement for tenancy of holding," there are inserted the words "Description of holding [*give a short description of holding and of situation thereof*]." (County Court (No. 1) Rules, 1929.)

New lease: Extension of time.—There is no power to extend the time for applying to the Court for a new lease under sect. 5 (2) of the Landlord and Tenant Act, 1927. Ord. Lb. r. 14 (3), of the County Court Rules does not extend to the case. (*Donegal Tweed Co., Ltd.* v. *Stephenson,* Div. Ct.)

New lease: Fishing rights.—Where a new lease is ordered under the Landlord and Tenant Act, 1927, s. 5, incorporeal rights included in the former tenancy will be ordered to be included in the renewed lease. The Court ordered certain fishing rights included in the original letting of an hotel to be included in the renewed lease. (*Stumbles* v. *Whitley,* C. A.)

Referee, remuneration of.—Ord. Lb. r. 31, of the County Court Rules has been amended by Rule 9 of the County Court (No. 1) Rules, 1929. Paragraph (3) is renumbered and stands as paragraph (4), and a new paragraph is inserted to stand as paragraph (3):—

> "(3) In the event of the proceedings being terminated by settlement between the parties or otherwise after the Referee has received notice of his appointment under Rule 12 of this Order, but before there has been any sitting by him, the Court may, on the application of either of the parties or of the Referee, determine what amount (if any) shall be allowed to the Referee by way of remuneration."

LANDLORD AND TENANT.—*And see* Landlord and Tenant Act, 1927, *ante.*

Agreement for lease: General words.—A written agreement for a lease exceeding three years is not a "conveyance" within sect. 62 of the Law of Property Act, 1925. (See definition in

sect. 205 (1) (ii).) Therefore, the general words are not included in the agreement. But the agreement may entitle the tenant to quasi-easements under the principle of *Wheeldon* v. *Burrows* (1879), 12 Ch. D. 31. (*Borman* v. *Griffith*, Maugham, J.)

Assignment of reversion: Covenant to pay premium.—A., a freeholder, granted a lease to B. at a premium which was to be paid by instalments. Before the lease A. had mortgaged the freehold to C. C. sold to B. under his power of sale before B. had paid all the premium. It was held that A. could recover from B. the unpaid balance of the premium, which was payable irrespective of what happened to the lease afterwards. The covenant to pay the premium was not a covenant having reference to the subject-matter of the lease so as to pass with the reversion under sect. 141 of the Law of Property Act, 1925. (*Hill* v. *Booth*, C. A.)

Distress for rent: Hire-purchase agreement.—If a hire-purchase agreement gives the owners power to determine the agreement by notice in certain events, they can recover the goods if a distress is put in by the landlord after notice determining the agreement has been given. The goods are no longer comprised in a hire-purchase agreement within the meaning of sect. 4 of the Law of Distress Amendment Act, 1908. The owners can recover the goods without showing their title to do so under the agreement. This distinguishes the case from *Hackney Furnishing Co.* v. *Watts*, (1912) 3 K. B. 225. (*Smart Brothers, Ltd.* v. *Holt*, Div. Ct.)

Distress for rent: Invalid notice.—Rent being in arrear, a distress was levied by a certificated bailiff, and a notice was served under 2 W. & M. sess. 1, c. 5. The inventory to the notice of the goods seized, after setting out certain specified articles, concluded, "and all other goods upon the premises unless specially exempt sufficient to satisfy the amount of this distress and expenses." Goods included under these latter words were sold under the distress. A Divisional Court (Talbot and Humphreys, JJ.), following *Kerby* v. *Harding* (1851), 6 Exch. 234, and distinguishing *Wakeman* v. *Lindsey* (1850), 14 Q. B. 625, held that

the notice was insufficient, as it left it uncertain what goods were taken. (*Davies* v. *Property and Reversionary Investments Corporation, Ltd.*)

Expiration of lease: Duty of lessee to deliver possession.—At the expiration of a lease, the tenant surrendered possession of the premises to the landlord, with the exception of part thereof let to a sub-tenant (not being a statutory tenant), who refused to quit. The landlord was held to be entitled to recover the value of the part of the premises during the time possession thereof was withheld. (*City Tailors, Ltd.* v. *Barder,* MacKinnon, J.)

Forfeiture: Relief to underlessees.—See the Law of Property (Amendment) Act, 1929, at the foot of this page.

Restrictive covenant: Application for discharge.—In a landlord's action for possession, brought to enforce a forfeiture of the lease consequent on the breach of a covenant to use the premises as a private dwelling-house only, the lessee cannot ask for leave to apply to the Authority under the Law of Property Act, 1925, s. 84, to discharge the restrictive covenant, and for an order to stay proceedings meantime. Such an action is not an action "to enforce a restrictive covenant" within the meaning of that section, and cannot be stayed in virtue of the power thereby given. (*Iveagh* v. *Harris,* Eve, J.)

Small Tenements Recovery Act: Recovery of possession—Jurisdiction.—The justices have jurisdiction under the Small Tenements Recovery Act, 1838, to issue a warrant for possession in favour of a mortgagee if the mortgage deed contains an attornment clause, although the tenancy created by the attornment clause is only made determinable when default has been made in payment under the mortgage deed. The justices have jurisdiction when a tenancy has been "determined by a legal notice to quit *or otherwise.*" (*Friend* v. *Shaw* (1887), 20 Q. B. D. 374, and *Arden* v. *Boyce,* (1894) 1 Q. B. 796, distinguished.) (*Dudley and District Benefit Building Society* v. *Gordon,* Div. Ct.)

LAW OF PROPERTY ACTS.

Amending Act of 1929.—The Law of Property (Amendment) Act, 1929, which came into force on the 5th February, 1929,

amends the provisions of sect. 146 of the Law of Property Act, 1925, relating to relief against forfeiture of underleases, by enacting that nothing in sub-sects. (8), (9) or (10) shall affect the provisions of sub-sect. (4).

The Act reverses the unintentional alteration of the law which was made in consolidating the provisions of the Conveyancing Act, 1881, s. 14, and the Conveyancing Act, 1892, s. 4, relating to relief against forfeiture of leases. There are certain cases in which no relief can be granted to the immediate lessee. For instance, if a lessee of a mining lease fails to comply with a covenant or condition for allowing the lessor to have access to or inspect books, accounts, &c., or to enter or inspect the mine; or if a lessee of a lease of a farm, or mine, or public-house or furnished dwelling-house becomes bankrupt or has his interest taken in execution, in these cases the lessee can obtain no relief. But under sect. 4 of the Conveyancing Act, 1892, his underlessee might have been relieved, that section being an enactment independent of sect. 14 of the Act of 1881, and containing no exceptions. (See *Imray* v. *Oakshette*, (1897) 2 Q. B. 218; *Gray* v. *Bonsall*, (1904) 1 K. B. 601.) In the Law of Property Act, 1925, however, the provision as to underlessees was made a sub-section of the section relating to lessees, and other subsections provided that the section should not extend to certain cases. The result was that underlessees were unintentionally deprived of their former right to ask for relief in the excepted cases—a serious matter, for instance, for mortgagees of mines, licensed premises and agricultural property. The Act of 1929 restores the *status quo ante*. The Court may grant an underlessee relief for whatever cause the head lease is forfeited.

But the Act is not retrospective. If the right of re-entry or forfeiture has already been enforced, it is too late now for the underlessee to apply for relief.

Apportionment of tithe annuity or rent: Fees.—The fees to be taken by the Ministry of Agriculture and Fisheries in respect of transactions under the Tithe Annuities Apportionment Act, 1921, and under sects. 191 and 192 of the Law of Property Act, 1925, are to be found in an order of the 24th June, 1929. (S. R. & O. 1929, No. 584, price 1*d*.)

The order prescribes the following fees:—

On an order or certificate for the apportionment of a tithe redemption annuity or a rent, a fee calculated in accordance with the following scale:—

(*a*)

Where the total amount of annuity or rent included in the apportionment.	*Fee.* £	*s.*	*d.*
Does not exceed 5*l.*	2	0	0
Exceeds 5*l.* but does not exceed 10*l.*	3	0	0
„ 10*l.* „ „ „ 25*l.*	3	10	0
„ 25*l.* „ „ „ 50*l.*	4	0	0
„ 50*l.* „ „ „ 75*l.*	4	10	0
„ 75*l.* „ „ „ 100*l.*	5	0	0
For each further 50*l.* or part of 50*l.* up to 500*l.*	0	7	6
For each further 100*l.* or part of 100*l.* exceeding 500*l.*	0	7	6

Where there is more than one annuitant or rent owner, for each additional annuitant or rent owner one-third of the fee calculated on the above scale shall be added. In addition, a sum of 5*s.* shall be payable in respect of each area beyond two on which a separate annuity or rent is apportioned.

Provided that the fee payable under this part of the scale shall not exceed 3*l.* if the apportioned parts of each annuity or rent do not exceed two in number and one such part does not amount to more than 2*l.*

(*b*)

Where a map is required an additional fee shall be payable on the following scale:—

Area to be Mapped.	*Fee.* £	*s.*	*d.*
Not exceeding 5 acres	2	5	0
„ 10 „	2	10	0
„ 15 „	2	15	0
„ 20 „	3	0	0
For each further 20 acres or part of 20 acres	0	7	6

This Schedule of Fees shall, in substitution for any existing schedule or scale of fees (see S. R. & O. 1926, No. 301),

apply to any transaction herein referred to in any proceedings commenced on or after the 1st July, 1929.

Commons: Fees.—By an order made on March 30th (S. R. & O. 1929, No. 314), the fee to be taken in respect of a consent under the Law of Commons Amendment Act, 1893, Light Railways Act, 1896, s. 21, Commons Act, 1899, s. 22, to the inclosure, approvement, or grant of part of a common, or under the Law of Property Act, 1925, s. 194, to the erection of any building or fence or construction of any other work whereby access to a common is prevented or impeded, is a sum not exceeding 2*l*. The fee is exclusive of the cost of any advertisements and of any local enquiry by the Ministry which the Ministry may consider necessary.

This applies in substitution for any existing schedule or scale of fees (see S. R. & O. 1926, No. 301), to any transaction in any proceedings commenced on or after the 1st February, 1929.

Copyhold: Vesting of legal estate—Joint tenants.—A. was admitted to copyhold land in 1802 on trust to pay a rentcharge to B. and his heirs, and, subject thereto, on trust for C. and his heirs. At the end of 1925 D. and E. were entitled jointly to the equitable fee simple, and F. to the equitable rentcharge, but there was no tenant on the Court rolls. Astbury, J., held that (1) under the Law of Property Act, 1922, Sched. 12, para. 8 (b), the legal estate vested momentarily in the personal representative of the last trustee; (2) F. got the legal estate in the rentcharge, either under para. 8 (d) of Sched. 12 of the Act of 1922, or under Sched. 1, Part II. para. 4, of the Law of Property Act, 1925; (3) thereupon the legal estate of the personal representative, being a bare outstanding legal estate, vested in D. and E. as joint tenants, subject to the rentcharge under para. 3 of Part II. of Sched. 1 of the Act of 1925; (4) then sect. 36 of the Act of 1925 operated and created a trust for sale. Not being a transitional provision, sect. 36 did not operate until the transitional provisions had done their work. (*Re King's Theatre, Sunderland, Denman Picture Houses, Ltd.* v. *Thompson and Collins' Enterprises, Ltd.*)

Leasehold: Mortgage by sub-demise—Purchaser's liability on covenants.—A lease for eighty-one years, granted in 1848, was mortgaged by sub-demise. The mortgage contained a covenant by the mortgagor to assign the lease to the mortgagee if required to do so. The mortgagee sold under his power of sale, and at the end of 1925 the mortgage term was vested in the defendant. The Law of Property Act, 1925, made him personally liable on the covenant to repair, for by virtue of paras. 3 and 6 (d) of Part II. of the First Schedule of the Act, the head term vested in him. Para. 2 of Part II. did not apply. Nor did para. 7 (a) apply, for the head term was not held in trust for him "subject to redemption." The defendant could not take advantage of para. 7 (m), added by the Law of Property (Amendment) Act, 1926, for he had not in fact disclaimed. (*Peachy* v. *Young*, Tomlin, J.)

Redemption of rents: Prescribed securities.—A Treasury Minute (S. R. & O. 1928, No. 1134) prescribes the following securities under sect. 191 (2) of the Law of Property Act, 1925—

$2\frac{1}{2}$ per Cent. Consolidated Stock.
4 per Cent. Consolidated Stock.
3 per Cent. Local Loans Stock.
$3\frac{1}{2}$ per Cent. Conversion Loan.

Transitional provisions: Wills Act, 1837, s. 31.—A testator appointed his wife executrix, and devised to her upon trust for her use and benefit the whole of his real estate on condition that the children were properly cared for and the property kept in good repair, and at her decease the property was to be equally divided among the children. The testator died in 1917, and his widow died in 1923, having appointed T. to be her sole executrix. Six children were then living. It was held that the widow was legal owner of the land in trust for the persons entitled in undivided shares, by virtue of the Wills Act, 1837, s. 31. The property, therefore, under para. 1 of Part IV. of Sched. 1 of the Law of Property Act, 1925, was vested in her executrix in trust for the six children in undivided shares upon the statutory trusts. (*In re Collins, Jowers* v. *Collins*, Maugham, J.)

Trust for sale: Two trustees to receive capital money.—Land was conveyed to W. upon trust for sale, with full powers of an absolute owner, but the purchase-money was to be paid to G. and B., whose receipt should be a sufficient discharge. It was held by Maugham, J., that W. could make a title without appointing another person to act with him, the purchase-money being paid by the purchaser to G. and B. Sect. 27 (2) of the Law of Property Act, 1925, as amended by the Law of Property (Amendment) Act, 1926, Sched., did not apply, for the money would not be "paid to or applied by the direction of" W. (*Re Wight and Best's Brewery Co., Ltd.'s, Contract.*)

Undivided shares: Conversion.—An undivided share in land is no longer real estate owing to the statutory trust for sale. Therefore, where a testator made his will before 1926 and gave all his freehold property to A., and all his leasehold and personal property to B., on the testator's death after 1925 B. was held entitled to the testator's undivided shares in freehold property. (*Re Kempthorne, Charles* v. *Kempthorne,* C. A.)

Undivided shares: Statutory trusts, overriding effect of.—An administration action was pending when the Law of Property Act, 1925, came into force, and a receiver, appointed in the action, was receiving the rents and distributing them amongst thirty-six persons. The legal estate was vested in the Public Trustee, who had been appointed trustee of the will. It was held that, applying *Cardigan* v. *Curzon-Howe* (1885), 30 Ch. D. 531, and *Re Flint,* (1927) 1 Ch. 570, the Public Trustee could execute the statutory trusts under Part IV. of the First Schedule of the Act without the leave of the Court. The statutory trusts had superseded the trusts of the will for the execution of which the administration decree was made. (*Bernhardt* v. *Galsworthy,* Eve, J.)

Undivided shares: Statutory trusts—Partition.—Where trustees are holding land on the statutory trusts for persons entitled in undivided shares, they can only partition the land between the persons entitled if they are absolutely entitled and of full age. Where some of the shares are settled and infants are interested,

sect. 28 (3) of the Law of Property Act, 1925, does not apply. Nor can the trustees exercise an express power of appropriation given by the settlement, for the statutory trusts override such a power. But the Court may sanction an appropriation under sect. 57 of the Trustee Act, 1925. (*Re Thomas, Thomas* v. *Thompson,* Clauson, J.)

Undivided shares: Trust to divide income among a class.—A devise, by a testator dying after 1925, of land to trustees on trust to divide the income amongst a class during a certain period, followed by a trust for another class after that period, is a devise of land in undivided shares within sect. 34 (3) of the Law of Property Act, 1925. (*Re Flint,* (1927) 1 Ch. 570; *Re Higgs and May's Contract,* (1927) 2 Ch. 249; and *Re Robins,* (1928) Ch. 721, followed.) Therefore, the executors must assent to the land vesting on the statutory trusts in the trustees of the will for the purposes of the Settled Land Act. It was also held that, the devise being subject to annuities, the annuitants were beneficially interested in possession within sect. 26 (3), and the trustees must consult them, as well as the persons interested in possession in the rents and profits. (*Re House, Westminster Bank* v. *Everett,* Clauson, J.)

Undivided shares: Vesting.—A testator, who died in 1921, devised a freehold house to his sister, Jane, for life, then to his sisters, Elizabeth and Margaret, for their lives, share and share alike, or the survivor. On the death of all the sisters, the house was to be sold and the proceeds divided between certain persons. The sister, Jane, was appointed sole executrix. She proved the will, and died in 1924, having enjoyed the use of the house during her life. She appointed her sister, Margaret, executrix, who proved her will in 1925, and appointed Charles Price to be a trustee of the testator's will, in the place of Jane Price, and declared that the house should vest in him. It was held by Clauson, J., that on the coming into operation of the Law of Property Act, 1925, the legal estate vested in the Public Trustee under para. 1 (3) of Part IV. of the First Schedule. At the end of 1925, the two sisters had legal life estates, and the legal estate in remainder was vested in Charles Price on trust to sell.

The house was settled land, but as there was a sole trustee, there were no trustees of the settlement in whom the house could vest as joint tenants. (*Re Price, Price* v. *Price.*)

LEGITIMACY.

Consolidation of petitions.—A direction was given by the President of the Probate, Divorce and Admiralty Division in January, 1929, that where it appears that more than one petition has been filed on behalf of petitioners claiming to be children of the same father and mother, the Attorney-General may apply by summons before the Registrar, at any time after appearance, for an order that the suits be consolidated, and that he be at liberty to file an answer to both or all the said petitions. The summons must be served upon the petitioner in each suit which it is sought to consolidate.

Legitimacy Act, 1926, s. 9.—The parents of two illegitimate children, A. and B., married in 1905. At the time when the children were born the parents were free to intermarry. A. died in 1919, leaving a child, C. The father died in 1919, and the mother died, in 1928, intestate, leaving B. and C. surviving. It was held by Romer, J., that all the mother's property belonged to B., and C. was not entitled to share. B. was legitimated by sect. 1 of the Legitimacy Act, 1926, on the 1st January, 1927, but A. was not, as he died before that date. Sect. 9 only allows an illegitimate child or his issue to take on the mother's death if the mother left no legitimate issue. "Legitimate" in that section includes a legitimated child. (*Re Lowe, Stewart* v. *Lowe.*)

LIBEL.

Photograph of married man with woman not his wife.—If a paper publishes the photograph of a married man and a woman not his wife, describing them as "Mr. X. and Miss Y., whose engagement has been announced," there is evidence to go to the jury of a libel on the man's wife. The words are capable of meaning that the man is unmarried and of imputing that his wife is not really married. It is not necessary to show that the

person publishing a statement is aware of the facts which make a defamatory meaning possible, and it does not matter, therefore, that the newspaper does not know that the man is married. (*Cassidy* v. *Daily Mirror Newspapers, Ltd.*, C. A., Scrutton and Russell, L.JJ., Greer, L.J., dissenting.)

Privilege: Solicitor—Presumptive client.—If a person interviews a solicitor with a view to getting the solicitor to act for him in a purchase, but the solicitor is never in fact retained to act, defamatory statements at the interview are privileged. All that passes between a solicitor and a presumptive client with a view to the client retaining the solicitor is privileged, even if the retainer is not accepted. (*Minter* v. *Priest*, C. A.)

Privilege: Statements to company and to wife.—The resident manager and liquidator of a company, carrying on business abroad, sent letters reflecting on the moral character of the managing director, (1) to a director of the company, (2) to the wife of the managing director, who, as an old friend of his, the writer considered should be informed. The Court of Appeal held that the letter to the director was privileged, but the letter to the wife was not. (*Watt* v. *Longsdon.*)

LICENSING.

Confirming authority: Duty to act judicially.—Licensing justices granted a new licence unconditionally. The confirming authority, after hearing the applicant and opponents, confirmed the licence subject to two conditions. The justices declined to agree to the second condition, and at a further meeting the confirming authority confirmed the licence subject to the first condition only. No notice of this further meeting, and no opportunity of appearing thereat, was given to the parties. The Court of Appeal held that the order made at the further meeting was a nullity, and that the matter must go back to the confirming authority to hear the case again. The authority should have sat judicially in the presence of the parties. (*R.* v. *Huntingdon Confirming Authority, Ex parte George and Stamford Hotels, Ltd.*)

Notice of application: Affixing on church door.—The Licensing Consolidation Act, 1910, s. 15, requires notice of application to be affixed to the door of the church or chapel in the "parish or place" in which the premises are situate. In *R.* v. *Confirming Authority of Smethwick, Ex parte Holt's Brewery Co.*, a notice of an application in respect of premises situated in the parish of W. was exhibited at the parish church of Smethwick, to which, by the Smethwick Corporation Act, 1927, the parish of W. had, except for poor law purposes, been transferred. It was held by a Divisional Court that there was no need for the notice to be exhibited in an unconsecrated church in W. licensed for divine service. It was further held that objection to the validity of the notice could be taken before the confirming authority, though not raised before the licensing justices.

Refreshment house: Metropolis –Harbouring prostitutes.—The keeper of a refreshment house in the metropolis can be convicted under the Metropolitan Police Act, 1839, s. 44, for the action of his manager in harbouring prostitutes, although he has expressly warned the manager against permitting prostitutes to assemble on the premises, and has no personal knowledge that prostitutes meet on the premises, and has been guilty of no negligence in failing to notice the fact. (*Allen* v. *Whitehead*, Div. Ct.)

LIMITATION OF ACTIONS.

Public authority: Certiorari.—Proceedings by way of *certiorari* are not within the Public Authorities Protection Act, 1893. An application for *certiorari* against a public body need not be made within six months after the act complained of. (*R.* v. *London County Council, Ex parte Swan & Edgar* (1927), *Ltd.*, Div. Ct.)

LOCAL AUTHORITIES.—*And see* RATING AND VALUATION.

Audit: Costs of appeal—Further appeal.—A local authority appealed under sect. 2 of the Audit (Local Authorities) Act, 1927, to the Minister of Health against the disallowance by the district auditor of certain payments made by them, and requested him to state a case for the Divisional Court. The Divisional Court,

having decided in favour of the local authority, held that the questions of the appellants' costs of the appeal, and of the respondent's right to be paid his costs of the appeal out of the funds of the appellants, were in the discretion of the Minister of Health. It was also held that the Court had power to grant the respondent leave to appeal from its decision to the Court of Appeal. (*Council of the County Palatine of Lancaster* v. *Crowe* (No. 2), Div. Ct.)

Clerk and assistant overseer: Dismissal.—A person appointed under the Public Health Act, 1875, s. 189, as assistant overseer and clerk to the council, can be dismissed without notice although under a minute of the council appointing him the appointment is subject to three months' notice on either side. The contract to employ otherwise than "at the pleasure of" the council is not legally binding. (*Brown* v. *Dagenham Urban District Council*, McCardie, J. Cp. *Field* v. *Borough of Poplar, infra.*)

Disqualification.—As to disqualification for membership of a county council, &c. by reason of receipt of poor rate, see sect. 10 of the Local Government Act, 1929.

Housing: Improvement scheme—Ultra vires.—A scheme purporting to be made under the Housing Act, 1925, providing for the compulsory acquisition of lands by a local authority, for the clearing of the site and for sale thereof by the authority, unless the Minister of Health otherwise directs, is *ultra vires*, and the Court will grant prohibition against such a scheme being proceeded with. A scheme providing for the sale of the site acquired compulsorily, but not containing provisions for the development and user thereof, is not an improvement scheme within the meaning of the Act. (*R.* v. *Minister of Health, Ex parte William Davis*, C. A.)

Licensed street traders: London borough—Charge for services.—Sect. 37 of the London County Council (General Powers) Act, 1927, does not enable a borough council to make a charge on licensed street traders in respect of general services. The section entitles a council to recover charges "for the removal of refuse or other services rendered"; but "other services" must be

construed *ejusdem generis* with the removal of refuse. (*Westminster Corporation* v. *Armstrong,* Div. Ct.)

Local Government Act, 1929, effects far-reaching changes in local government law. It is impossible to epitomise all its 138 sections and 12 schedules. Reference is made under their appropriate headings to some of the provisions, *e.g.*, as to the transfer of the functions of the poor law authorities to the county council, and as to derating of certain hereditaments. Except as to derating, the Act comes into force on the 1st April, 1930. The derating provisions came into force on the 1st October, 1929.

Motor car park, provision of.—Land was acquired by a municipal corporation for the widening of adjoining streets and the formation of new streets and public pleasure gardens, and part of the land was in fact used as a pleasure garden. It was held that the corporation could convert part of this garden into a motor car park under the Public Health Act, 1925, s. 68. There had been no permanent dedication of the land for use as public gardens, and the use proposed was within the purposes for which the purchase had originally been made. (*Att.-Gen.* v. *Sunderland Corporation,* C. A.)

Parking place: Appeal—Person aggrieved.—Where a local authority decides to purchase land for a parking place under the Public Health Act, 1925, s. 68, a person who has given notice of objection on grounds common to any ratepayer or any member of the public, and not by reason of the infringement of any legal right special to himself, is entitled to appeal to a petty sessional Court. Any person entitled to object is entitled to appeal if his objection is overruled, since he is a "person aggrieved" within the meaning of the section. (*Sevenoaks Urban District Council* v. *Twynam,* Div. Ct.)

Private Street Works Act: Apportioned amount recoverable from new owner.—Where a local authority has made a final apportionment under sect. 12 of the Private Street Works Act, 1892, and the owner of the premises, not having paid the amount apportioned, sells the premises, the local authority can recover the amount, with interest since the apportionment, from the

new owner. And this is so however long a time may have elapsed since the date of the apportionment, for the Statute of Limitations does not begin to run in favour of the new owner until the date of the demand made upon him. (*Dennerley* v. *Prestwich Urban District Council*, C. A.)

Repair of sewer.—A private person cannot obtain a mandatory injunction against a local authority requiring the repair of a sewer vested in them. The proper remedy is to apply to the Minister of Health under sect. 299 of the Public Health Act, 1875. (*Clark* v. *Epsom Rural District Council*, Maugham, J.)

Roads.—See Part III. of the Local Government Act, 1929, *post*, under Roads.

Sanitary inspector: Dismissal.—The position of a sanitary inspector is not the same as that of clerk to the council. He can only be dismissed with the consent of the Minister of Health. (*Field* v. *Borough of Poplar*, McCardie, J. Cp. *Brown* v. *Dagenham Urban District Council*, *supra*.)

LOCAL LOANS.

Rates of interest.—The rates chargeable on loans granted from the Local Loans Fund on and after the 15th October, 1929, will be found in a Treasury Minute dated October 14th (S. R. & O. 1929, No. 892). (73 Sol. J. 767.)

LOTTERY.

Prizes for purchasers placing seller's goods in order of popularity.—It is an offence under sect. 41 of the Lotteries Act, 1823, for the advertising manager of a company to organise a competition amongst purchasers of the company's products, under which prizes are awarded for lists of the company's products placed in order of popularity as determined by the lists of all the competitors. There is evidence on which the justices are entitled to find that the result of the competition depended entirely on chance. (*Hobbs* v. *Ward*, Div. Ct.)

Prizes to customers in order of their purchases.—It is an offence if a trader advertises a scheme under which regular weekly

customers receive a gift, each customer's name being placed on a list in rotation in the order received, and the prize going to the customer whose name follows that of the last person to receive a prize. It is publishing a scheme for the sale of chances in a lottery under sect. 41 of the Lotteries Act, 1823. (*Howgate* v. *Ralph,* Div. Ct.)

LUNACY.

Contempt: Practice.—Where a person is committed by the judges in lunacy for contempt of Court in interfering with a lunatic and with the receiver of that lunatic, the person in question not appearing on the application to commit, the Court making the order for commitment may sign a Bench warrant of arrest directed to the tipstaff and his assistants. There is no need for the warrant to be signed by the Lord Chancellor. (*Re Seaton,* C. A.)

Conversion.—Money of a lunatic was, by order in lunacy made before 1926, used to buy realty. By a subsequent order made in 1927, the realty was sold. The lunatic died intestate. The lunatic's heir was held entitled to the proceeds of sale. The first order, not containing any saving clause as in *A.-G.* v. *Marquis of Ailesbury* (1887), 12 A. C. 672, converted the money into realty. The subsequent sale of the realty did not affect the heir's rights (Lunacy Act, 1890, s. 123), and the heir was entitled by virtue of sect. 51 (2) of the Administration of Estates Act, 1925. (*Re Silva,* Romer, J.)

MANORIAL DOCUMENTS.

Deposit.—A list of societies, libraries and museums which have been approved by the Master of the Rolls as suitable for the custody of manorial documents will be found in the Law Society's *Gazette* for May, 1929, p. 143, or may be obtained from the Secretary of the Public Record Office.

MARRIAGE.—*And see* Matrimonial Causes.

Abroad: Prisoner of war.—During the war, a British subject, who was a prisoner of war in Constantinople, there went

through a Church of England marriage ceremony. This was held to be a valid common law marriage. (*Doust* v. *Doust*, Bateson, J.)

Age.—The age of marriage has been raised by the Age of Marriage Act, 1929. Formerly, the earliest age at which consent could be given and a valid marriage could be contracted was twelve in the case of females, and fourteen in the case of males. A marriage under the age of consent was not absolutely void, but only voidable by either party on the age of consent being reached, becoming a valid marriage if affirmed after the age of consent had been reached. It is now provided that a marriage between persons either of whom is under sixteen shall be void. But in proceedings under the Criminal Law Amendment Act, 1885, s. 5 (1), or for indecent assault, it will be a sufficient defence to prove that, at the date of the alleged offence, the accused had reasonable cause to believe that the girl in respect of whom the alleged offence was committed was his wife. (Sect. 1 (1).)

Nothing in the Act affects any marriage solemnised or contracted before the passing of the Act (10th May, 1929), and any such marriage shall be or become valid in any case where, if the Act had not been passed, it would be or become valid. (Sect. 1 (2).) The reference here to "become valid" presumably refers to a marriage contracted when the parties, or one of them, was under the age of consent, which is, therefore, left capable of affirmation after that age is attained. By the same sub-section, nothing in the Act is to affect, in Scotland, any right or capacity of legitimation *per subsequens matrimonium*. For the general purposes of the Legitimacy Act, 1926, however, a marriage, where one of the parties is under sixteen, will not result in legitimation.

A single woman delivered of a child, who, before the birth, was party to a marriage which, but for this Act, would have been valid, may, if the other party had access within twelve months before the birth of the child, apply at any time for a bastardy summons against that party, even though he has not paid money for maintenance within twelve months after birth of the child. (Sect. 2.)

By sect. 3, this Act, with the Marriage Acts, 1811 to 1898, may be cited as the Marriage Acts, 1811 to 1929. The Act does not extend to Northern Ireland.

Breach of promise.—If, in an action for breach of promise of marriage against a defendant who was a convict at the date of the alleged promise, the defendant does not plead that he was disabled by the Forfeiture Act, 1870, s. 8, from making the contract, he cannot rely on this point in the Court of Appeal. Without deciding whether the plea would have been a good one had it been raised in time, the Court of Appeal said that it was not open to the defendant on appeal to take a point that was not raised in the Court below. (*Vidler* v. *Sasun,* C. A.)

Breach of promise: Action after promisor's death.—Roche, J., expressed the opinion that no damages can be recovered on a promise to marry after the promisor's death. He decided that the special damage alleged—viz., the taking of a flat at her fiancé's request, and the giving up of a remunerative business at his request—was not sufficient to support such an action, even if it lay in other circumstances. (*Riley* v. *Brown.*)

Celebration: Lex loci.—If two persons, domiciled in the Province of Quebec, are married in France according to the rites of the Roman Catholic Church, but the marriage is void under French law for lack of a civil ceremony, the marriage cannot be treated as valid in Quebec. Not being celebrated in accordance with the *lex loci,* the marriage is invalid under Art. 156 of the Civil Code of Quebec, which expresses the settled rule of private international law. As, however, the alleged wife had acted in good faith, she had acquired certain civil rights, and alimony should be granted to her. (*Berthiaume* v. *Dastous,* P. C.)

Cyprus.—The jurisdiction conferred upon the Courts of Cyprus expressly excluding the power to grant nullity or dissolution, a Cyprian nullity decree will be ineffective in this country. (*Papadoupolos* v. *Papadoupolos,* Div. Ct.)

Egypt.—The Foreign Marriages (Egypt) Order in Council, 1928 (S. R. & O. 1928, No. 1046), provides that no marriage officer in Egypt shall solemnize any marriage between parties

either of whom is serving in Egypt in the Army or Air Force; but this does not affect the powers as a marriage officer under the Foreign Marriage Act, 1892, s. 12, of any commanding officer of any of His Majesty's ships.

Foreign nullity decree.—At the Bow Street Police Court, on a summons for maintenance, Mr. Graham Campbell refused to recognise as valid a decree made by the Court of the parties' domicil purporting to dissolve a marriage celebrated in England in accordance with the formalities required by English law. (*Papadopoulos* v. *Papadopoulos,* since affirmed on different grounds by Div. Ct.)

Prohibited degrees: Illegitimacy.—A man cannot marry his deceased wife's niece even if his wife was illegitimate. The respondent was the widower of an illegitimate sister of the petitioner's mother, and the marriage of the respondent and petitioner was declared void. (*Restall, otherwise Love* v. *Restall,* Hill, J.)

MASTER AND SERVANT.—*See also* WORKMEN'S COMPENSATION.

General servant hired to another.—If M. lends his servant, S., to X., and sustains damages from S.'s negligence in the course of his employment with X., M. can sue X. That S. is the general servant of M. does not debar M. from suing X. for S.'s negligence at a time when S. is acting for a particular purpose as temporary servant to X. (*Leggott (G. W.) & Son, Ltd.* v. *C. H. Normanton & Son, Ltd.*, Div. Ct.)

Tutor: Notice to determine engagement.—A tutor was engaged to go abroad as a private tutor to a boy of ten, and was told that his engagement would probably last at least three years. Humphreys, J., held that, in the circumstances, three months' notice was reasonable notice to terminate the employment. (*Wilson* v. *Ucelli.*)

MATRIMONIAL CAUSES.

Alimony: Appointment of receiver.—If the Court makes an order for alimony on a decree for judicial separation, and the

husband refuses to pay such alimony, the Divorce Court will appoint a receiver and order specified banks, corporations and companies to pay all income received by them on behalf of the respondent to the receiver. The order in effect restrains the banks, &c. from paying to the husband until the order for alimony is satisfied. (*Burrowes* v. *Burrowes,* C. A.)

Answer: Affidavit in support.—The President directed, on the 21st December, 1928, that where an affidavit is required in support of a respondent's answer, such affidavit shall depose whether or no there is collusion or connivance between the parties to the marriage.

Assizes: Autumn Circuit.—The Autumn Circuit (Matrimonial Causes) Order, 1928 (S. R. & O. 1928, No. 893, L. 29, price 1*d.*), amended the Order of the 14th May, 1912, by inserting the following paragraph:—" (d) Matrimonial causes of any class prescribed under sect. 70 (5) of the Supreme Court of Judicature (Consolidation) Act, 1925, and any matters arising out of or connected with any such causes may be tried and determined at any Assize town on the Autumn Circuit at which, in accordance with any rule of the Supreme Court for the time being in force, divorce business may be taken at the Assizes." (See "Law Notes" Year Book, 1922, p. 85.)

Condonation: Separation agreement.—Where a husband entered into a separation agreement which provided that the wife " may reside at such place or places with such person or persons as she may from time to time think fit," it was held that this did not amount to condonation, the Court being satisfied that the husband had acted on the best advice he could get and had no idea of consenting to his wife living in adultery. (*King* v. *King and Evans,* Merrivale, P.)

Costs, bankruptcy notice in respect of.—Where the co-respondent in divorce proceedings is condemned in costs and is ordered to pay the amount to the petitioner's solicitors on their undertaking to pay the same into Court to be dealt with, the solicitors cannot issue a bankruptcy notice in respect of the sum so ordered to be paid. The notice is bad (1) because the order

is not a final one; (2) because the solicitors are not persons who have the interest of a principal in receiving the amount, but are merely acting as machinery by which the amount may enure to the benefit of their client. (*Re a Debtor* (No. 76 of 1929), C. A.)

Costs of wife: Husband disputing jurisdiction.—A husband cannot refuse to pay and give security for his wife's costs of a divorce suit or an issue as to domicil merely on the ground that he disputes the jurisdiction. A husband who appears under protest to a wife's petition and disputes the jurisdiction on the ground of his having a foreign domicil may be ordered to pay his wife's costs of suit up to the setting down of the issue, and to give security for her costs attendant on the issue and down to the close of the proceedings. (*Johnstone* v. *Johnstone*, C. A.)

Costs of wife: Registrar's discretion.—The power of a registrar, under Rule 91 of the Matrimonial Causes Rules, 1924, to provide for the wife's costs is discretionary, and not subject to review unless he has clearly proceeded on a wrong basis. He may take into consideration the capital and income of both parties, and the nature and availability of it in arriving at a conclusion as to the "sufficient separate estate" of the wife within the rule. Among other matters, the amount of an allowance under an existing deed of separation is a factor. (*Williams* v. *Williams*, Hill, J.)

Costs, wife's, of collusive proceedings.—Where a wife's petition was dismissed on the ground of collusion, Lord Merrivale, P., refused to make any order as to the costs on the wife's petition, which contained unnecessary and improper charges: his Lordship, however, allowed her 50*l*., the costs of defending herself against her husband's charges. (*P.* v. *P.*)

Costs: Wife's petition abandoned—Dissolution granted on husband's answer.—In a dissolution suit, a petitioning wife abandoned her petition. The respondent husband, who had originally not defended the suit but was given leave to appear and file an answer, obtained a decree for dissolution on his answer. Lord Merrivale, P., ordered the husband to pay the wife's costs down to the date of the service of the husband's summons for

leave to enter an appearance and file an answer. (*Goddard* v. *Goddard*.)

Cruelty, groundless accusations against a husband as.—Where the wife of a Wesleyan minister made persistent and groundless accusations against her husband of adultery with members of his congregation, making his position impossible and impairing his health, Merrivale, P., held that this amounted to cruelty justifying a decree of judicial separation. (*Davis* v. *Davis*.)

Custody of infants: Jurisdiction.—The Divorce Court has power to deal with the custody of a child although an order as to custody has already been made by a Court of summary jurisdiction under the Guardianship of Infants Act, 1925. After granting a decree *nisi*, Bateson, J., gave the custody of the child to the father, notwithstanding that an order of a metropolitan police magistrate had already given it to the mother. He directed, however, that his order should not take effect till the metropolitan magistrate had had an opportunity of revoking the order made by him, which the magistrate declined to do. The Court of Appeal ((1929) P. 245) declined to deal with the conflict of jurisdiction, but set aside the learned judge's order as "inchoate," depending on an event not realised, viz., the revocation by the magistrate of the order made by him. On a further application to Bateson, J., the learned judge affirmed his previous view that the magistrate's order was no bar to an order by the Divorce Court, but, on the fresh evidence, thought the father should have the custody, and left the magistrate's order to stand. (*Vigon* v. *Vigon*.)

Custody of infants: Legitimated child.—The Divorce Court has no jurisdiction, after a decree of divorce, to make an order under the Judicature Act, 1925, s. 193, as to custody of a child who has been legitimated under the Legitimacy Act, 1926, and who has been re-registered by the Registrar-General accordingly. Registration does not affect the position. No special divorce jurisdiction exists, though an order giving the care and control of the child to the petitioner can be made in exercise of the Court's

general equitable jurisdiction. (*Jones* v. *Jones,* Hill, J., following *Green* v. *Green,* (1929) P. 101.)

Dissolution of marriage: Second invalid ceremony of marriage.—Where the parties to a dissolution suit have gone through two ceremonies of marriage, the first secretly, and the second openly, the Court will not refer to the second ceremony in the decree of dissolution. The Court can only dissolve marriages. The second ceremony was not a marriage. If the petitioner wants to get rid of it, he must ask for a declaration of nullity. (*Hewett* v. *Hewett and Dupin,* Hill, J.)

Evidence.—The rule requiring evidence of a criminal offence given by an accomplice to be corroborated applies to proceedings in the Divorce Court. (*Statham* v. *Statham,* C. A.)

Evidence by affidavit.—In *Wilson* v. *Wilson and Berry,* which was an undefended petition for dissolution, Lord Merrivale granted a decree although the whole of the evidence was based on affidavits. The petitioner, domiciled in England, was located, for the time being, in Hong Kong, and the respondent accompanied the co-respondent to Western Australia. The misconduct was proved by affidavit.

Evidence: South African marriage.—A marriage was effected by special licence before a resident magistrate and witnesses, under the provisions of the Marriage Act, 1860, Cape of Good Hope Statutes, No. 16 of 1860. In a suit for dissolution here, the Court had in evidence the original certificate signed by the magistrate and a certificate issued from the Registry of Births, Marriages and Deaths for the Union of South Africa in the terms of Union of South Africa Statutes, No. 17 of 1923, s. 40: a copy of the 1923 statute was also produced. Bateson, J., held that the marriage had been properly proved. (*Waterfield* v. *Waterfield and Pretorius.*)

King's Proctor's intervention: Non-disclosure of petitioner's adultery.—If, in a dissolution suit, the petitioner's adultery is not disclosed, and the King's Proctor intervenes, the Court has a discretion to allow the decree *nisi* to stand. (*Moyse* v. *Moyse and Crick,* Hill, J.)

Legitimacy Act, 1926.—A Direction of the Senior Registrar, dated 7th June, 1929, details the principles observed in dealing with applications for custody of children born prior to the marriage. The Direction provides:—

Custody of children.—With reference to the Directions of 19th May, 1927, and 21st January, 1929, and the reported cases of *Bednall*, (1927) P. 225; *Green*, (1929) P. 101, and *Jones*, (1929) W. N. 72, it should be noted that, in dealing with applications for custody of children born prior to the marriage, the following principles should be observed:—

1. If the child has not been declared legitimate by a decree under the Act, no order for custody can be made.

2. If the child is shown to be the illegitimate child of the wife, an order for "care and control" will ordinarily be made at her instance whether the child has been re-registered or not; but if the husband is the petitioner no order will be made, even though the child may have been re-registered.

3. If a declaration of legitimacy has been made under the Act, the usual order for custody may be made.

Maintenance: Cross-examination of husband.—The Court will not order a respondent husband to attend for cross-examination on an application for permanent maintenance before the making of the decree absolute. (*Warwick* v. *Warwick*, C. A., following the principle in *Fox* v. *Fox*, (1925) P. (C. A.) 157.)

Maintenance: Effect of deed of separation.—The House of Lords have upheld the decision of the Court of Appeal. A covenant by a wife in a deed of separation not to claim maintenance from her husband other than that agreed to be paid, does not prevent her from claiming maintenance in the event of a dissolution of the marriage. The wife cannot, by her own covenant, preclude herself from invoking the jurisdiction of the Court. (*Hyman* v. *Hyman*, H. L. Cp. *May* v. *May*, *ante*.)

Maintenance: How affected by delay in petitioning.—In alloting maintenance, the Court must take into account the conduct of the parties. A wife, knowing of her husband's

adultery, should not "watch the fruit ripen on the wall" and do nothing till the husband becomes prosperous. But where the delay in proceeding arises from a genuine desire to receive back the husband, permanent maintenance will be ordered on the basis of the husband's financial position at the time of the proceedings. (*Chapple* v. *Chapple,* Hill, J.)

Maintenance: Justices—Discretion to refuse.—If a wife applies to the justices for maintenance on the ground of desertion, the justices cannot refuse to make the order on the ground that the wife deceived the husband into marrying her by an untrue statement that she was pregnant. (*Dawson* v. *Dawson,* Div. Ct.)

Maintenance: Justices—Effect of Separation agreement.—Whether an agreement not to take proceedings for maintenance can oust the jurisdiction of the justices under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, was discussed, but not decided, in *Burton* v. *Burton.* (Div. Ct.)

Maintenance: Justices—Wilful neglect to maintain.—Where a wife applies for maintenance under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, there must be shown a refusal to maintain which has no explanation reasonable and in good faith. It is not sufficient to show that the husband has failed to maintain a wife who, without good reason and against the husband's will, has voluntarily separated herself from him. (*Weatherley* v. *Weatherley,* Div. Ct.)

Nullity: District Registrar—Medical inspectors.—If a Poor Person suit for nullity is heard on Assize, the District Registrar has power to appoint medical inspectors. District Registrars have the same powers as the Divorce Registrar. (*Stroud* v. *Stroud*, Rowlatt, J.)

Nullity: Incapacity of each party quoad the other.—Where, in a suit for nullity, the evidence proved incapacity in each party *quoad* the other, Rigby Swift, J., followed *G.* v. *G.*, (1912) P. 173, and granted both parties a decree *nisi*, leaving it to either party to apply to have the decree made absolute. His Lordship directed an allowance to be made to the wife at an agreed rate *dum sola et casta*. (*H.* v. *H.*)

Pleadings: Amendment.—In a nullity suit, counsel for the wife cross-examined a husband petitioner as to facts of his alleged adultery, and counsel for the husband alleged that this course was adopted to show the husband's insincerity in bringing the nullity suit. The Court gave the wife leave to amend her pleading by adding a plea of insincerity. (*Porter* v. *Porter*, Hill, J., not following *S.* v. *S.*, (1907) P. 224, which was decided before the Judicature Act, 1925, s. 198, was passed.)

Poor person: Profit costs—Special circumstances.—A husband left his wife and went away to New Zealand with another woman. In a suit for divorce by the wife as a Poor Person, Mr. Justice Bateson made an order for profit costs on the ground of "special circumstances." (See Rule 31B of the Poor Persons Rules.) (*Gribble* v. *Gribble.*)

Restitution, wife's extravagant habits as a defence to.—Where a husband, whose business was in India, provided a home for his wife in England, but refused to allow his wife to reside with him in India, on the ground that her extravagance and financial laxity would, if she remained in India, prevent his continuing his business there, Hill, J., held that the husband was justified, and that the facts disclosed no grounds for a restitution decree. (*G.* v. *G.*)

Settlement, variation of.—On an application to vary a marriage settlement, the Court must have in mind the interests of

living persons. In this case there was a possibility that the wife's sister might in the future have some interest in the settled fund, and the Court would not make any order which might prejudice her right without her consent. (See *Wynn* v. *Wynn* (1898), 78 L. T. 796; *Meredyth* v. *Meredyth,* (1895) P. 92; *Morrisey* v. *Morrisey,* (1905) P. 90; *Walpole* v. *Walpole,* (1901) P. 196.) (*Webb* v. *Webb,* Bateson, J.)

Settlement, variation of: Effect on power to appoint to second husband.—On a divorce at the suit of the wife, an order by consent was made varying a marriage settlement, so as to extinguish the husband's rights "as if he were now dead and had died in the lifetime of the petitioner." The wife subsequently asked the Court to make a declaration that she had become entitled to exercise a power of appointment in favour of a second husband contained in the settlement. But Hill, J., refused to make the declaration before the necessity arose on an appointment being made. He was asked, in the alternative, to vary the original order, but said that, unless by consent of the parties, he had no power to do this. (*Alexander* v. *Alexander.*)

Settlement: Variation—Meaning of "post-nuptial settlement."—Any settlement upon a husband in the character of husband, or upon the wife in the character of wife, or upon both as husband and wife, is a "post-nuptial settlement on the parties" within sect. 192 of the Judicature Act, 1925. Such a settlement is variable by order of the Court, although the wife is not a party to the deed, and although the trustee has an absolute unfettered discretion as to the funds. (See an unreported case, *Janion* v. *Janion* (1926).) (*Prinsep* v. *Prinsep,* Hill, J.)

Settlement, variation of: Power to appoint on second marriage.—On an application to vary a marriage settlement after decree absolute for dissolution, the Divorce Court can give the guilty spouse power to resettle the trust funds on any subsequent marriage, where there is already in the settlement power to appoint on a second marriage after dissolution of the first by death. (*Alston* v. *Alston,* Bateson, J.)

Settlements: Variation—Principles to be acted on.—Broadly speaking, the object of the Court on varying a marriage settle-

ment after divorce should be to provide for the innocent party and generally to re-arrange the position between the parties, but not to interfere with existing settlements more than is necessary to provide for the wife and issue. (*Prinsep* v. *Prinsep,* C. A.)

Sodomy, charge of, with wife.—In the case of divorce proceedings based on sodomy, the same cogent evidence is required to overcome the presumption of innocence as in a criminal case, and the same duty rests on a judge in summing up to a jury to warn them of this, and that they ought not to find the offence to be proved on the uncorroborated evidence of an accomplice. (*Statham* v. *Statham,* C. A.)

Solicitor's duty.—A solicitor acting for a petitioner for divorce should inquire of the petitioner whether he or she has been guilty of adultery with a view to an application to the Court to exercise its discretion in his or her favour. (*Moyse* v. *Moyse,* Hill, J.)

MEDICAL PRACTITIONERS.

Where a registered medical practitioner applies to the General Medical Council for the removal of his name from the register, the Council is not bound to accede to the application without inquiring whether grounds exist for the penal removal of the practitioner's name. The Council may first institute inquiries, and, on proof of the necessary grounds, may direct the applicant's name to be removed penally. (*R.* v. *General Medical Council, Ex parte Kynaston,* Div. Ct.)

MERCHANDISE MARKS.

Several Orders have been made under the Merchandise Marks Act, 1926. The full names of the Orders which are mentioned briefly below are:—The Merchandise Marks (Imported Goods) No. 4 Order, 1928 (S. R. & O. 1928, price 3*d.*); The Merchandise Marks (Imported Goods) No. 5 Order, 1928 (S. R. & O. 1928, No. 1052, price 2*d.*); The Merchandise Marks (Imported Goods) No. 1 Order, 1929 (S. R. & O. 1929, No. 204, price 2*d.*); The Merchandise Marks (Imported Goods) No. 2 Order, 1929 (S. R. & O. 1929, No. 395, price 1*d.*); The Merchandise Marks (Im-

ported Goods) No. 3 Order, 1929 (S. R. & O. 1929, No. 477, price 2*d.*). These several Orders refer to the following goods. The Orders should be consulted for the exact nature of the required markings:—

Ball and Roller Bearings.—Importation and sale are both forbidden unless the indication of origin is die-stamped or otherwise impressed or etched on the visible surface of the outer ring of the bearing, but this does not apply to any ball or roller bearing if at the time of importation it forms an integral part of another article. (No. 4 Order, 1928; S. R. & O. 1928, No. 1047, price 3*d.*)

Carbon Paper.—The No. 4 Order of 1928 (S. R. & O. 1928, No. 1047, price 3*d.*), forbids the sale, but not the importation, of this paper unless the origin is duly indicated.

Carpets, Rugs and Mats.—The sale of these is forbidden unless the origin is indicated. The Order does not include (a) antique goods; (b) mats or matting made wholly or mainly of reed, rush, straw or coir; or (c) goods of linoleum, cork, rubber, oilcloth or skin. (No. 1 Order, 1929; S. R. & O. 1929, No. 204, price 2*d.*)

Copper Plates, &c.—The sale of the following copper goods is forbidden unless they bear an indication of origin:—

(a) plates and sheets;
(b) strips and other rolled sections and rods;
(c) wire, other than insulated wire;
(d) tubes.

(No. 1 Order, 1929; S. R. & O. 1929, No. 204, price 2*d.*)

Cotton wool, gauze tissues, sanitary towels (but not sized wadding), may not be sold, unless the origin is indicated. Importation unmarked is not prohibited. (S. R. & O. 1928, No. 1047, price 3*d.*)

Currants, sultanas and raisins.—Importation and sale are forbidden unless the origin is indicated in the prescribed manner. (No. 5 Order, 1928; S. R. & O. 1928, No. 1052, price 2*d.*)

Cutlery.—Importation and sale of the following articles are both forbidden, unless the indication of origin is die-stamped or

etched on each article, except for safety-razor blades, when the mark must be on the box or container and inner envelope:—

(a) knives with one or more blades made wholly or partly of steel or iron other than surgical knives or knives for use in machines;

(b) scissors, including tailors' shears and secateurs, made wholly or partly of steel or iron;

(c) razors other than safety razors;

(d) carving forks;

(e) knife sharpeners made wholly or partly of steel;

(f) safety-razor blades, as well as blades for any of the aforesaid articles.

If the goods are mounted on a card this must also be marked on the front.

The Order does not apply to goods exempted from safeguarding duty. (No. 4 Order, 1928; S. R. & O. 1928, No. 1047, price 3*d*.)

Cycle parts.—The sale (but not the importation) is forbidden of the frames and most frame fittings for pedal cycles, and most other fittings for pedal cycles, unless they carry the prescribed mark. (No. 4 Order, 1928; S. R. & O. 1928, No. 1047, price 3*d*.)

Eggs in shell: Dried eggs.—Importation and sale of these are forbidden unless the origin is indicated. (No. 5 Order, 1928; S. R. & O. 1928, No. 1052, price 2*d*.)

Elastic cords, webs, braids and fabrics.—The No. 3 Order of 1929 forbids the sale (but not the importation) of imported elastic cords, webs, braids or fabrics on reels, spools, boards or cards, or in rolls, hanks or bundles, unless they bear an indication of origin.

Flame safety lamps, including lamp cups, steel shields, gauze elements, lamp glasses and middle plates. (No. 4 Order, 1928; S. R. & O. 1928, No. 1047, price 3*d*.)

Grave monuments and enclosures of granite and parts thereof.—See No. 1 Order, 1929, No. 204, price 2*d*.

Oat products, which include oatmeal, rolled oats (but not crushed or bruised natural oats), oat flour and groats. Importation and sale unmarked are both forbidden. The Order applies to

blends and mixtures. (No. 5 Order, 1928; S. R. & O. 1928, No. 1052, price 2*d.*)

Pumps (not including agricultural or horticultural spraying machines, hand syringes, cycle tyre pumps, grease guns for motor cars, pumps or syringes for surgical purposes, small hand-operated pumps for scientific, laboratory or educational use, or toy pumps). Sale, but not importation, unmarked is forbidden. (No. 4 Order, 1928; S. R. & O. 1928, No. 1047, price 3*d.*)

Rims for motor and other cycles.—Sale (but not importation) is forbidden unless the origin is indicated. (No. 4 Order, 1928; S. R. & O. 1928, No. 1047, price 3*d.*)

Rose trees, but not rose stocks, must be marked on all sales or exposure for sale. (No. 2 Order, 1929; S. R. & O. 1929, No. 395.)

Rubber manufactures.—The No. 3 Order of 1929 forbids the sale, but not the importation, of the specified rubber manufactures imported into the United Kingdom unless the origin is embossed, impressed, stamped, printed or stencilled.

School rules, but not slide rules, or carpenter's rules. The sale, but not the importation, is forbidden unless the origin is indicated. (No. 1 Order, 1929; S. R. & O. 1929, No. 204, price 2*d.*)

Small arms.—The No. 3 Order of 1929 forbids the sale (but not the importation) of any imported small arm (being a firearm) unless the origin is incised or impressed on the exposed surface of the barrel in proximity to the breech.

Spring balances.—See No. 1 Order, 1929; S. R. & O. 1929, No. 204, price 2*d.*)

Surgical, medical, dental and veterinary instruments and appliances, aseptic hospital and dental furniture, and dental supplies.—The sale or exposure for sale (but not the importation) of the following articles is forbidden, unless they or their containers, &c. bear the prescribed indication of origin:—

(a) surgical, medical, dental and veterinary instruments made wholly or mainly of metal;

(b) surgical, medical, dental and veterinary appliances of all descriptions, except artificial eyes;

(c) aseptic hospital furniture made wholly or mainly of metal, including operation and examination tables and chairs, instrument and dressing tables, ward lockers, instrument and dressing cabinets, sterilisers for instruments, for dressings and for bowls;

(d) dentists' supplies of the following descriptions:—

(i) artificial teeth;
(ii) absorbent wool rolls and pellets;
(iii) abrasive points, strips and discs;
(iv) dental rubber;
(v) rubber dam;
(vi) gutta percha temporary stopping;
(vii) dental wax of all descriptions;
(viii) impression compound of all descriptions;
(ix) dental cements and amalgams;
(x) foils, crowns, discs, solder, cylinders, plate and wire of gold, platinum or other precious metal;

(e) dental furniture, including dental chairs as well as bases, bodies and head rests therefor, instrument tables, lockers, dental cabinets and dental cuspidors.

(No. 4 Order, 1928; S. R. & O. 1928, No. 1047, price 3*d*.)

Travelling trunks and bags, attaché cases, fancy bags, &c. —The sale (but not the importation) of the following is prohibited unless the origin is indicated:—

(1) Goods of the following descriptions, whether fitted or not, except those made of metal, wood or cardboard (whether covered with paper or not), basket or wicker work, cane, rush, or any combinations of such materials, viz.:—

(a) travelling trunks and bags, portmanteaux, suit cases, hat cases, holdalls, valises, knapsacks, sports bags and cases, dressing cases, and travellers' sample cases;

(b) cartridge cases, rifle and gun cases, fishing rod cases;

(c) attaché cases, dispatch bags, post bags, courier bags, bankers' wallets, school satchels.

(2) Fancy articles of the following descriptions:—

(a) ladies' handbags, whether fitted or not, made wholly or partly of leather, imitation leather or textile materials;

(b) cases, pouches, purses, pocket wallets, bags, photograph frames and similar receptacles, whether fitted or not, made wholly or partly of leather or imitation leather.

Nothing in this part of this Order extends to:—

(1) toys, bookbinding, bound books or pipe cases; or

(2) fitted articles of the descriptions specified in paragraph (2), *supra*, where the value of the fittings exceeds two-thirds of the value of such fitted article.

Goods made wholly or mainly of paper, pulp paper, cardboard or chip and whether covered with paper or not are not deemed to be included in paragraph (2), *supra*. (No. 4 Order, 1928; S. R. & O. 1928, No. 1047, price 3*d*.)

MISTAKE.

Money paid in ignorance of fact.—An insurance company entered into marine insurance contracts without issuing stamped policies. The liquidator of the company paid money under these contracts in ignorance of the fact that no stamped policies had been issued. If he had known, he would still have paid, for he was ignorant of the law making such contracts void. It was held that he could not recover the money. There is no right to recover money paid in ignorance of fact where knowledge of the fact would not have prevented the payment. (*Home and Colonial Insurance Co., Ltd.* v. *London Guarantee and Accident Co., Ltd.*, Wright, J.)

MONEYLENDERS.

Judgment summons.—On the hearing of every judgment summons in respect of money lent by a registered moneylender, the judgment creditor is required to produce to the judge a copy, up to date, of the statement which the debtor is entitled to ask for under sect. 8 of the Moneylenders Act, 1927: this rule applies to loans made before the Act, as well as those made since it came into force. (Announcement of Bankruptcy judges, 6th July, 1929.)

Memorandum of contract.—The memorandum required to be signed by the borrower, under sect. 6 of the Moneylenders Act,

1927, must (*inter alia*) show the date on which the loan was made. If the wrong date is inserted, even though the error is purely clerical and no one is deceived, the contract is unenforceable, and a surety for the loan cannot be sued. (*Gaskell, Ltd.* v. *Askwith*, C. A.)

MOROCCO.

Foreign jurisdiction.—See the Morocco (Amendment) Order in Council, 1929. (S. R. & O. 1929, No. 211, price 3*d.*)

MOTORS.—*And see* Road Vehicles.

Articulated vehicles.—The Heavy Motor Car (Amendment) Order, 1929 (S. R. & O. 1929, No. 841), deals with the use and construction of articulated vehicles. The expression "articulated vehicle" is defined in the Order to mean a heavy motor car, together with a trailer drawn thereby, which is so constructed and by partial super-imposition attached to the heavy motor car that a substantial part of the weight of the trailer is at all times borne by the heavy motor car. The Order prescribes that every wheel of such vehicles shall be fitted with resilient tyres, and that where the tyres are not pneumatic the rim diameters of wheels so shod shall be not less than 670 mm. The total overall length of such vehicles, excluding any starting handle, is limited to 33 ft. The limits of weight to be borne by the wheels of such vehicles, and how such weights may be distributed, are also prescribed.

Electrically-driven vehicle.—The decision of the Court of Appeal (1929, Y. B. 1—165) has been reversed by the House of Lords. A vehicle propelled by electricity generated by an internal combustion engine in the vehicle is an electrically-propelled vehicle within the meaning of the Finance Act, 1926, Sched. I., clause 5, and is, therefore, entitled to a licence at the lower rate applicable to electrically-driven vehicles. (*Tilling-Stevens Motors, Ltd.* v. *Kent County Council.*)

Excessive noise.—The Motor Cars (Excessive Noise) Regulations, 1929 (S. R. & O. 1929, No. 416), came into force on 1st August, 1929. By them no person may use or permit to be used on any highway any motor car which causes any excessive

noise either directly or indirectly as a result of (a) any defect (including a defect in design or construction), lack of repair or faulty adjustment in the motor car or in any vehicle drawn thereby or in any part or accessory of such motor car or vehicle drawn thereby, or (b) the faulty packing or adjustment of the load of such motor car or vehicle drawn thereby.

But it is a good defence to proceedings taken under this Regulation (i) to prove that the noise was due to some temporary or accidental cause, and could not have been prevented by the exercise of due diligence and care on the part of the owner or driver of the motor car; or (ii) in the case of proceedings against the driver or person in charge of a motor car who is not the owner thereof, to prove that the noise arose through a defect in design or construction of the motor car, or through the negligence or fault of some other person whose duty it was to keep the motor car or vehicle drawn thereby in proper condition or in a proper state or repair or adjustment, or properly to pack or adjust the load of such motor car or vehicle drawn thereby, as the case may be, and could not have been prevented by the exercise of reasonable diligence and care on the part of such driver or other person in charge of the motor car.

Lighting: Illumination of identification plate.—Paragraph 2 of the Road Vehicles (Registration and Licensing) Amendment Regulations, 1928 (which requires a lamp to be kept illuminating the identification plate on the back of a motor car), is not *ultra vires*. The rule-making power of the Minister of Transport under the Roads Act, 1920, s. 12 (1), has not been abrogated by the Road Transport Lighting Act, 1927, s. 11 (2). The words "local or other authority" in the latter section do not include the Minister of Transport. (*Swaits* v. *Entwhistle*, Div. Ct.)

Obstruction of highway: Heavy motor—Prosecution.—If a steam tractor, weighing thirteen tons, obstructs the highway, proceedings cannot be taken as for an offence under Article IV. (2) of the Motor Cars (Use and Construction) Order, 1904. Such a locomotive is not within that Order, or the Heavy Motor Car Order, 1904, and the Heavy Motor Car (Amendment) Order, 1921. (*Carpenter* v. *Fox*, Div. Ct.)

Omnibus carrying too many passengers: Prosecution.—It is not necessary to obtain the consent of the Commissioners of Inland Revenue to a prosecution under sect. 15 of the Railway Passenger Duty Act, 1842, for allowing a motor omnibus to carry more passengers than it is licensed for. Sect. 21 of the Inland Revenue Regulations Act, 1890, requiring such consent to proceedings for the recovery of any fine, penalty, or forfeiture under any Act relating to Inland Revenue does not apply, because (1) the offence is not a proceeding of the kind mentioned in sect. 15 of the Act, and (2) in any case the proceeding would be taken out of that section by sect. 21, since it is a proceeding in relation to an offence against the law of excise. (*Kirkby* v. *Minty*, Div. Ct.)

Omnibus plying for hire.—If a person licensed to ply for hire with motor omnibuses in two districts, A. and B., connected by a road through a third district, C., for which he is not licensed, runs a service of buses between A. and B., and takes up, at garages in C., passengers who have purchased tickets in such garages, there is a plying for hire without a licence in district C. This follows *Leonard* v. *Western Services, Ltd.*, (1927) 1 K. B. 702. (*Att.-Gen.* v. *Sharp*, Clauson, J.)

Stationary motor cars.—When a motor car is stationary on any highway no person shall use or permit to be used in connection therewith any instrument provided for the purpose of giving audible warning, except when such use is necessary on grounds of safety. (Motor Cars (Excessive Noise) Regulations, 1929 (S. R. & O. 1929, No. 416).)

Unlicensed omnibus: Proceedings—"Person aggrieved."—The director of an omnibus company cannot, without the consent of the Attorney-General, take proceedings against others under the Town Police Clauses Acts, 1847 and 1889, for unlawfully permitting an unlicensed motor omnibus to ply for hire. He is not a "person aggrieved" within sect. 253 of the Public Health Act, 1875. That section prevents him from instituting a prosecution without leave of the Attorney-General, since the Public Health Act, 1875, incorporates the provisions of the Town Police Clauses Acts with regard to hackney carriages. (*Sheffield Corporation* v. *Kitson*, Div. Ct.)

NATIONAL HEALTH INSURANCE.

Approved societies.—See the Approved Societies (Amendment) Regulations, 1928. (S. R. & O. 1928, No. 1026.)

Dental benefit.—See the National Health Insurance (Dental Benefit) Regulations, 1929. (S. R. & O. 1929, No. 112, price 2*d.*)

Duration of insurance.—See the National Health Insurance (Duration of Insurance) Regulations, 1929. (S. R. & O. 1929, No. 433.)

Insurance committees.—Regulations were made in August —entitled the National Health Insurance (Insurance Committees) Regulations, 1929—to come into force at once as provisional regulations.

Medical Benefit.—See the National Health Insurance (Medical Benefit) Amendment Regulations (No. 2), 1929. (S. R. & O. 1929, No. 800, price 1*d.*)

Mercantile marine.—See the National Health Insurance and Contributory Pensions (Mercantile Marine) (Collection of Contributions) Regulations, 1929. (S. R. & O. 1929, No. 591, price 4*d.*)

Navy, army and air force.—See the National Health Insurance (Navy, Army and Air Force) Amendment Regulations, 1929. (S. R. & O. 1929, No. 654.)

Northern Ireland.—See the National Health Insurance (Extension of Enactments to Northern Ireland) Order, 1929. (S. R. & O. 1929, No. 79.)

Transitional regulations.—See the National Health Insurance (Transitional) Regulations, 1929. (S. R. & O. 1929, No. 830.)

NEGLIGENCE.

Admiralty rule.—See *The Vectis,* Div. Ct.

Contributory negligence.—In an action for personal injury caused by a collision between the plaintiff's and the defendant's cars, the jury found that both parties contributed to the accident, but could not agree as to whose negligence was the greater.

Lord Hewart, C.J., held that the defendant was not entitled to judgment. The dictum of Lord Campbell, C.J., in *Dowell* v. *General Steam Navigation Company, Ltd.* (1855), 5 E. & B. 195, at p. 206, to the effect that "the plaintiff has no remedy if his negligence in any degree contributed to the accident," is not a correct statement of the law. The disagreement of the jury on the question whose negligence was really responsible for the accident made it impossible to give judgment on the verdict for either side. (*Service* v. *Sundell*, affirmed C. A.)

Trespasser or licensee?—A boy, four years old, was injured by the terminal wheel of a haulage system belonging to the defendants' colliery. The wheel was situated in a field about a hundred yards from a highroad, from which it was separated by a hedge with many gaps in it. Efforts were made by the defendants from time to time to prevent children using the field, and the usual notice against trespassing was displayed in two places. The boy had been warned by his father not to enter the field. The House of Lords held that there was no evidence on which the boy could be found to be a licensee, and the defendants were not liable on the ground that they had set a trap for their licensee. (*Addie & Sons (Collieries), Ltd.* v. *Dumbreck*, H. L.)

NORTHERN IRELAND.

Land registration.—A rule, dated 30th March, 1929, was made under the Local Registration of Title (Ireland) Act, 1891, &c., amending the Orders and Rules of 1910, as to the issue of new land certificates and certificates of charge. (S. R. & O. 1929, No. 288; and see also the Land Registry (Northern Ireland) Rules, 1929 (S. R. & O. 1929, No. 289, price 2*d.*).

NUISANCE.

Rocks falling.—The owner of land is not liable for damage caused by a fall of rocks occasioned by natural decay and weathering. Where an owner of land, without wilfulness or negligence, uses his land in the ordinary manner of its use, though mischief is thereby occasioned to his neighbour, he is not liable in damages. This is a well-recognised exception to the

general rule laid down in *Rylands* v. *Fletcher* (1868), L. R. 3 H. L. 330. Nor can the landowner be compelled to put the rocks in a safe condition by a notice served under sects. 91 and 94 of the Public Health Act, 1875. (*Pontardawe R. D. C.* v. *Moore-Gwyn*, Eve, J.)

OVERSEAS TRADE.

Guarantees.—By the Overseas Trade Act, 1929, the period within which new guarantees may be given under the Overseas Trade Acts, 1920 to 1926, is extended so as to expire on the 8th September, 1931, and the period during which guarantees given under the said Acts (including renewed guarantees) may remain in force is extended so as to expire on the 8th September, 1936.

PARTNERSHIP.

Deferred debt.—If A. lends money to B. on the terms that B. shall pay a share of the profits of his business to C. for C.'s own use, A. is not a deferred creditor under sect. 3 of the Partnership Act, 1890. (*Re Pinto Leite, Ex parte Visconde des Olivaes*, Clauson, J.)

Dissolution action: Money in partner's hand—Application for payment into Court.—The defendant in a dissolution action was ordered to deliver an account of a particular transaction. The account showed a sum due to the partnership in respect of the transaction. Farwell, J., refused to order the money to be paid into Court, for though it was admittedly partnership money, it was not necessarily due to the plaintiffs. The partnership accounts might show a balance in the defendant's favour. (*Gretzer* v. *Heimann.*)

PATENT.

Petition for extension: Some petitioners applying for leave to withdraw on opposition.—Where six persons petitioned for an extension of a patent, and on the petition being opposed four of them applied for leave to withdraw, Luxmoore, J., gave leave on the four undertaking, jointly and severally, to pay the objectors'

costs up to date, without prejudice to their right of contribution from the other two. The petition was ordered to be amended by striking out the four and inserting the undertaking. (*Re Maschinenfabrik-Augsburg-Nurnberg A.G.*)

PATENTS AND DESIGNS.

Abuse of monopoly rights.—The reference to the public interest in sect. 27 (2) (d) of the Patents and Designs Act, 1907, must be understood in the widest sense, and not restricted merely to the interest of the consumer, and the mere fact that a patentee discriminates between applicants for a licence is not in itself contrary to the public interest. The terms of a licence are not necessarily unreasonable, because (1) a high royalty, compared with cost and selling price, is exacted; or (2) a licence is only obtainable if all of a number of connected patents are included; or (3) the licensee is restricted from selling apparatus except that of a particular manufacturer; or (4) export of articles manufactured under the licence is prohibited; or (5) royalties are made payable on articles not manufactured under the licence. (*Re Brownie Wireless Co. of Great Britain, Ltd.*, Luxmoore, J.)

Actions for infringement against manufacturers — Subsidiary actions against retailers—Stay of latter.—While an action for infringement of a patent was pending against manufacturers, the plaintiff commenced subsidiary proceedings for infringement against retailers supplied by those manufacturers. The defendants in the subsidiary proceedings applied for a stay of those proceedings till the principal action was disposed of, stating that their defence would be substantially identical with the defence raised in the principal action. Clauson, J., ordered the proceedings to be stayed on the defendants in the subsidiary proceedings undertaking to keep an account of sales and to submit to the same order as that ultimately made in the principal action. (*Multiple Utilities Co., Ltd.* v. *Souch.*)

Appeal from Comptroller.—There is no right of appeal to the High Court from an interlocutory order (*e.g.*, for discovery or production of documents) made by the Comptroller on an

opposed application for a patent. (*Re Robertson's Application,* Luxmoore, J.)

Belgium.—The Industrial Property Convention (Belgium) Order, 1929 (S. R. & O. 1929, No. 652), declares that the laws of Belgium confer rights with respect to the use of inventions in vessels, aircraft and land vehicles of the United Kingdom when coming into Belgium or the territorial waters thereof, corresponding to those mentioned in sect. 48 of the Patents and Designs Acts, 1907 to 1928. The provisions of sect. 91 of the Patents and Designs Acts, 1907 to 1928, are to apply to Belgium.

The Order in Council dated the 26th June, 1884, in so far as it relates to Belgium, is revoked.

Hungary.—The Industrial Property Convention (Hungary) Order, 1928 (S. R. & O. 1929, No. 480), is similar to the Order made with regard to Belgium (*supra*).

The Order of 17th May, 1909, relating to Austria-Hungary is revoked.

Judge.—Luxmoore, J., has been appointed by the Lord Chancellor to be the judge to whom an appeal is to be made or petition presented under sect. 92 of the Patents and Designs Act, 1907.

Novelty: Anticipation.—See *Pope Appliance Corporation* v. *Spanish River Pulp and Paper Mills, Ltd.*, P. C.

Portugal.—An order similar to the Belgium order (*supra*) has been made as to Portugal—The Industrial Property Convention (Portugal) Order, 1928 (S. R. & O. 1928, No. 1048). The Order of the 26th June, 1884, so far as it relates to Portugal is revoked.

Rules.—The Patents Rules of the 25th February, 1920, have been reprinted and are now S. R. & O. 1929, No. 338, price 1*s.* 9*d.*, postage 1*d.*

Switzerland.—An order similar to the Belgium order (*supra*) has been made with regard to Switzerland. It is the Industrial Property Convention (Switzerland) Order, 1929 (S. R. & O. 1929, No. 549). It revokes the Order of the 26th June, 1884, so far as it relates to Switzerland.

PENSIONS.

Contributory pensions.—Regulations have been made since publication of the Year Book for 1929 (see p. 175 of that book) on the following matters:—

Diplomatic service.—By the Superannuation (Diplomatic Service) Act, 1929, the provisions of the Diplomatic Salaries, &c. Act, 1869, cease to have effect except as regards to any existing member of the diplomatic service who gives notice of his desire to remain subject thereto. With this exception, the provisions of the Superannuation Acts, 1834 to 1919, are made to apply, with some modifications, to persons in the diplomatic service as they apply to other persons in the permanent civil service of the State.

Disqualification.—By sect. 11 of the Local Government Act, 1929, as from the 1st April, 1930, a person who has become an inmate of a poor law institution for the purpose of obtaining medical or surgical treatment is not, so long as he continues to require such treatment, disqualified from receiving an old age pension.

Fire brigade.—Sect. 18 of the Fire Brigade Pensions Act, 1925 (which provides for the local authority returning to a professional fireman, who leaves the brigade without a pension or gratuity, the rateable deductions made from his pay under the Act), has been amended by the Fire Brigade Pensions Act, 1929. By virtue of the amendment, the local authority must also return any sum paid by the fireman under sect. 22 of the Act, and, if he dies while serving in the brigade, and no pension or gratuity is payable on his death, the said deductions and sum are to be paid to his widow, or, if none, his personal representative, or direct to the persons entitled to his personalty if it is not reasonable to require probate or administration to be obtained.

Governors of dominions.—The law relating to the payment of pensions to governors and persons holding similar offices, who have served within His Majesty's Dominions or in British Protectorates or Mandated Territories, has been amended by the Pensions (Governors of Dominions, &c.) Act, 1929. The Act

amends the provisions of the Pensions (Governors of Dominions, &c.) Act, 1911, and repeals the Pensions (Governors of Dominions, &c.) Act, 1913.

Mercantile marine.—The collection of contributions is dealt with by the National Health Insurance and Contributory Pensions (Mercantile Marine) (Collection of Contributions) Regulations, 1929 (S. R. & O. 1929, No. 591, price 4*d.*)

Service dependants.—See Contributory Pensions (Service Dependants Pensions) Regulations (S. R. & O. 1929, No. 600).

Town clerk of metropolitan borough.—Fees received by the town clerk of a metropolitan borough in respect of his duties as registration officer under the Representation of the People Act, 1918, are pensionable "emoluments of his office" within the Superannuation (Metropolis) Act, 1886. (*Mayor of Stoke Newington* v. *Richards,* Div. Ct.)

Zanzibar.—The revenues of the Protectorate of Zanzibar have been declared to be a public fund within the meaning of sect. 4 of the Superannuation Act, 1929. (S. R. & O. 1929, No. 190.)

POLICE.

Bribes, recovery of, by Crown.—If a police officer, employed to make confidential enquiries, receives bribes given for the purpose of inducing him to make untrue reports, the bribes so received are recoverable from him by the Crown, and may be recovered by way of English information. (*Attorney-General* v. *Goddard,* Rowlatt, J.)

Metropolitan police: Gratuities, &c.—An order of the Secretary of State has been made regulating the gratuities and allowances to police and police courts' staff injured on duty. (S. R. & O. 1929, No. 282.)

POOR LAW.

Administration.—As from the 1st April, 1930, Part I. of the Local Government Act, 1929, brings the administration of the *Poor Law* into line with the rest of local government. Sect. 1 transfers the functions of each poor law authority to the council

of the county or county borough comprising the poor law area for which the poor law authority acts. If the poor law area lies in two or more counties, its functions are divided between the respective counties or county boroughs into which the area extends. The former poor law authorities are to cease to exist. Sect. 2 modifies slightly the generality of sect. 1 by making special provisions about the guardians' functions in respect of infant life protection and vaccination. Sect. 3 enables two or more councils, which wish to combine to carry out the functions transferred to them under this Part of the Act, to apply to the Minister of Health for an order enabling them to do so.

Sect. 4 requires every council to prepare, and within six months after the commencement of the Act, submit to the Minister an Administration Scheme of the arrangements it proposes to make for discharging the functions transferred to it from the guardians. In preparing the scheme, the council is required, by sect. 5, to have regard to the desirability of securing that all possible assistance shall be provided apart from the poor law, for instance, under the Public Health Act, 1875, the Local Government Act, 1888, the Mental Deficiency Act, 1913, the Maternity and Child Welfare Act, 1918, and others.

Whilst there will thus be many local variations in the county schemes, by sect. 6, sub-sect. (1), an Administrative Scheme shall provide for the constitution of a Public Assistance Committee of the council. This Committee may be a new committee, or an existing committee of the council may act as such committee; in either event the Scheme *may* provide for the inclusion of persons not members of the council, some of whom *shall* be women. At least two-thirds of the Committee must be members of the council. All business transferred to the council, except the power of raising a rate or borrowing money, shall stand referred to the Public Assistance Committee (sub-sect. (2)), and by sub-sect. (3), the council may even authorise the Public Assistance Committee to exercise the transferred functions, again except raising rates and borrowing money.

The success or failure of this new Poor Law will probably depend upon sect. 7, which contains provisions to maintain personal interest in its working. In a county, the Administration

Scheme shall provide (sub-sect. (1)) for the sub-division of the county into areas consisting of one or more districts. (A district is a non-county borough or urban or rural district.) In each area there is to be a local sub-committee of the Public Assistance Committee. This is called the Guardians Committee, and is to consist of not more than thirty-six nor less than twelve members.

The Guardians Committee is to consist of local councillors nominated by the council, county councillors representing the electoral area in which the district falls, and persons (not being elected members of the county council, and including women as well as men) appointed by the county council, but not exceeding one-third of the committee in number. The Guardians Committee, subject to conditions or restrictions imposed by the county council, is to deal with—

(i) the consideration and examination of applications for relief;

(ii) the determination of the nature and amount of the relief, if any, to be given to such applicants;

(iii) the determination of the amount, if any, to be reimbursed by the recipient or his relatives;

(iv) the visiting, inspection or management, if the Public Assistance Committee so request, of any poor law institution in the area.

The Minister, on the application of the county council, may exclude these provisions in any area. (Presumably this would enable him to prevent indiscriminate granting of relief.) In county boroughs the Administrative Scheme is to provide for sub-committees of the Public Assistance Committee and for their functions.

Sect. 8 contains the machinery for the approval of Schemes.

POWERS OF APPOINTMENT.

Special power: Exercise by anticipation.—A testatrix, in exercise of certain recited powers, and of all or any other then or at the date of her death her thereto enabling, under her will, made in 1916, made an appointment in favour of her husband, and in 1919 she made a codicil whereby, after dealing with

certain specific legacies, in all other respects she confirmed the will. By settlements made in 1918 and 1924 respectively, special powers of appointment were conferred on the testatrix, who died in 1929 without having made any further testamentary disposition. Clauson, J., held that there was an effective appointment under the settlement of 1918. The will showed an intention to exercise any power enabling her to appoint to her husband, and the codicil of 1919 brought the fund under the 1918 settlement within the operation of the will. But that will could not exercise the special power given by the settlement of 1924, being a power which did not exist at the date of either the will or the codicil. (*Re Bower, Bower* v. *Mercer,* Clauson, J.)

PRISON.

Remission marks: No right to earlier discharge.—A prisoner who has earned remission marks under the Prison Rules has no legal right to an earlier discharge. On the construction of the Prisons Act, 1898, s. 8, and Rules 36 (1) and 37A, an earlier discharge is a matter of grace and not of right. An action, therefore, will not lie against the prison governor for wrongfully depriving a prisoner of remission marks earned by him. Even if it would lie, the governor could claim the protection of the limitation of six months laid down by the Public Authorities Protection Act, 1893. (*Morriss* v. *Winter and Benke,* Horridge, J.)

PROBATE.

Administration with will annexed.—If a husband's will appoints no executor, but gives all his property to his widow on trust for his children, subject to a condition which is not fulfilled, and the whole of his estate does not exceed 1,000*l.*, the Court will make a grant of administration with the will annexed to the widow, as being, in the events which have happened and notwithstanding anything in the will, beneficially entitled to the estate. (*In the Estate of Dulson,* Bateson, J.)

Aliases.—Under date June 7th, 1929, the Senior Registrar directs that in all cases a grant should pass under the true name

of the deceased. If there is no property standing in that name, or the signature to the will is different, an affidavit of the facts must be filed, the name in which the will is signed being inserted in the grant as an alias.

The signature will be assumed to be the true name of the testator, in default of anything suggesting the contrary.

Where it is requested that the deceased be described by alternative names, the following verification may be accepted:—

1. Where more than one name is sworn to in the oath and it is also sworn there, or in an affidavit of alias, that there is property in the alternative name or names (at least one item of the property in each alternative name being specifically mentioned), the production of the securities, &c. can be dispensed with.

2. Where more than one name is sworn to in the oath, but nothing is stated as regards the property and no affidavit of alias is filed, the Clerk of the Seat may accept a certificate by the solicitor that there is property in the alternative name or names.

If this course is adopted, the securities, &c. must be produced.

In all cases the true name will come first.

The Circular of the 14th December, 1926, is cancelled.

Fees: Non-contentious matters.—New scales of fees to be taken in the Principal and District Registries in respect of non-contentious business came into force on the 1st January, 1929, under the Supreme Court (Non-Contentious Probate) Fees Order, 1928. (S. R. & O. 1928, No. 972/L. 31, price 3*d*.)

Legitimacy Act, 1926, practice under.—The following practice is in force in the Principal and District Probate Registries in cases where application is made for a grant of letters of administration by a person claiming to be a legitimated child of the deceased: A legitimated person will be described in the grant in the same way as an ordinary applicant (*i.e.*, a lawful son, or daughter) upon proof of legitimation, according to the circumstances of the case, by production of (a) a certified copy of the certificate of re-registration, or of (b) a decree made pursuant to sect. 188 of the Supreme Court of Judicature (Consolidation)

Act, 1925, and the Legitimacy Act, 1926, and subject to the clause (a) in the oath stating that he, or she, is the person referred to in the certificate or decree.

Offensive words.—The Probate Court has no power to order offensive words to be expunged from a will; but it may order the words to be omitted from the probate and from any copy of the will issued by the Registry. (*In the Estate of Maxwell*, Hill, J.)

Palestine: Tanganyika Territory.—The Colonial Probates Act, 1892, has been applied to Palestine (S. R. & O. 1929, No. 392) and to Tanganyika Territory (S. R. & O. 1929, No. 393).

Settled land: Grant to remainderman.—Land was settled on A. for life, with remainder to B. in fee simple; A. died intestate without known next of kin, leaving only personal effects of trifling value. The Court made a general grant of administration to B. under sect. 9 (b) of the Administration of Justice Act, 1928, without the issue of any citation, the Treasury Solicitor not proposing to interfere. (*In the Estate of Birch*, Hill, J.)

Settled land: Oath.—The Senior Registrar gave notice in April that the following wording of the paragraph dealing with settled land in the oath to lead a grant of representation has been adopted by the Probate Registrars—

> "and that to the best of . . . knowledge, information and belief there was . . . land vested in the deceased immediately before h... death which was settled previously thereto (and not by h... will) and remains settled land; "

and that this form should in future be used, but the wording thitherto adopted would, for the present, be accepted.

Settled land grant: Resettlement.—Land was settled on A. for life, with remainder to B. in fee simple. B. died in A.'s lifetime, having settled his remainder by his will. The land, on A.'s death, was held to be still settled land, so that a settled land grant could be made. Up to A.'s death the land was subject to the original settlement, which ceased to operate on A.'s death,

and to the settlement in B.'s will. It was always settled under one instrument or other, or under both as a compound settlement. The case of *Re Bridgett and Hayes' Contract*, (1928) 1 Ch. 163, did not apply. (*Re Taylor*, Bateson, J.)

Will proved cannot be sent out of jurisdiction.—The Probate Court has no power to allow a will proved here to be taken out of the jurisdiction for use in a Probate action in the Irish Free State. There is no power to make such an order, having regard to sects. 170 and 172 of the Judicature Act, 1925, and sect. 11 of the Administration of Justice Act, 1928. (*Re Greer*, Lord Merrivale, P.)

PUBLIC AUTHORITIES PROTECTION ACT, 1893.

Malicious prosecution.—An action for malicious prosecution against a public authority need not be brought within six months of the act complained of. The institution of a prosecution is not a step taken "in execution of a public duty" within the meaning of the Act. (*Hartin* v. *London County Council*, Avory, J.)

Quia timet action: Costs.—The decision of the Court of Appeal ((1929), Y. B. 1—193), has been affirmed by the House of Lords. Where an action is unsuccessfully brought against a public authority to restrain a threatened injury, the plaintiff can be ordered to pay solicitor and client costs. Sect. 1 (b) of the Public Authorities Protection Act, 1893, applies to *quia timet* actions, and is not confined to actions in respect of acts done. (*Graigola Merthyr Co., Ltd.* v. *Swansea Corporation.*)

Time for proceedings: Notice.—See *Scammell (G.) and Nephew, Ltd.* v. *Hurley and Others* (C. A.), where a borough council was held not liable in an action brought more than six months after they had arranged, during a general strike, with the electrical workers to discontinue the supply of power, on condition that the workers continued the supply of lighting. A defence, under the Public Authorities Protection Act, 1893, may be rebutted if it is shown that the defendant was not acting *bonâ fide* in pursuance of his statutory authority, but using that authority

for some improper object. But the burden of proof is on the plaintiff to prove, by cogent evidence, that there is no honest desire to execute the statute. Here there was no evidence to support a finding of the jury that the defendants were not acting in good faith.

RAILWAYS.

Freight rebate.—See the Railway Freight Rebate Scheme, approved by the Railway Rates Tribunal. (S. R. & O. 1929, No. 619, price 5*d*.)

Railway passenger duty.—The duty chargeable under the Railway Passenger Duty Act, 1842, was abolished as from the 1st April, 1929, by sect. 3 of the Finance Act, 1929.

Rates tribunal.—The Railway Rates Tribunal Rules are to apply to proceedings under sect. 8 of any of the four Acts by which the powers of road transport were conferred upon the four railway companies. (These Acts are ci.—civ. of 1928.) (S. R. & O. 1928, No. 1097.)

The same Rules are to apply to proceedings under sect. 136 and the XIth Schedule of the Local Government Act, 1929. (S. R. & O. 1929, No. 414.)

Safety.—See the Prevention of Accidents (Extension of Time) Rules, 1929. (S. R. & O. 1929, No. 351.)

RATING AND VALUATION.

Agricultural: Exemption.—Exemption from agricultural rates was granted to agricultural land and agricultural buildings as from the 1st October, 1929, by Part V. of the Local Government Act, 1929. The relief was subsequently accelerated by the Agricultural Rates Act, 1929, so as to apply to the period beginning on the 1st April, 1929, and ending on the 30th September, 1929. See the Agricultural Rates Regulations, 1929 (S. R. & O. 1929, No. 750), made by the Minister of Health under sect. 4 of the Act, as to the form and recording of certificates to be given by assessment committees; as to entries to be made in valuation lists, rate books or other documents; and as to the modifications to be made in demand notes for the purposes of the Act.

Assessment committee: Disqualification.—A Divisional Court in *R.* v. *North Worcestershire Assessment Committee, Ex parte Hadley,* discussed the effect of Schedule I., provision 12, of the Rating and Valuation Act, 1925, which disqualifies from service as representative of an urban district council on an assessment committee a person to whom the council has delegated its duties in connection with the preparation of valuation lists.

The Court held (1) that the disqualification applied even where the delegation occurred after the appointment as representative; (2) that appointment to a sub-committee to fix the value of properties in the district was a delegation within the section; (3) that while the inclusion of the person disqualified would not invalidate the proceedings of the assessment committee, the committee would not be lawfully constituted, and prohibition might go to prevent their acting; (4) that the rule should not go where in fact the committee has been diligent to prevent the disqualified member from acting on the matter being brought to its notice.

Derating is dealt with in Part V. of the Local Government Act, 1929. As from the 1st October, 1929, the Act provides for the total exemption of agricultural land and buildings from rates (sect. 67; and see the Agricultural Rates Act, 1929, *supra*), while partial relief is granted in respect of industrial and freight transport hereditaments.

RENT AND MORTGAGE INTEREST RESTRICTIONS.

It has been officially announced that the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925, will be continued in operation by the Expiring Laws Continuance Act, 1929, till 25th December, 1930.

Alternative accommodation.—There may be alternative accommodation in reference to a dwelling-house, including a portion used for business premises, though the alternative accommodation affords facilities for residence only. (*Middlesex County Council* v. *Hall,* Div. Ct.)

Alternative accommodation: Tenancy in consequence of employment.—Where a letting to a tenant in consequence of his

employment was terminated by notice on the employment ceasing, the tenant remaining on under a fresh contractual tenancy, he was no longer a tenant in consequence of his employment, and the landlord requiring the property under sect. 5 (1) (d) of the principal Act, was not absolved from showing alternative accommodation. The construction put on the sub-section by Bray, J., in *Lever Bros., Ltd.* v. *Caton*, 37 T. L. R. 664, was disapproved. (*Murton* v. *Aldis*, Div. Ct.)

Apportionment.—On an application for apportionment under sect. 12 (3) of the principal Act, in order to determine the standard rent of three rooms let to a sub-tenant, it was proved that the whole house was let on August 3rd, 1914, at a rent of 70*l.* per annum. This established a *primâ facie* case for apportionment—the onus was then on the landlord to prove that the three rooms had been separately let at an earlier date and had a standard rent of their own, making apportionment unnecessary. (*Platman* v. *Frohman*, Div. Ct.)

Business premises.—The Acts apply to a house with shop attached let under the description of "a shop and messuage." (*Hicks* v. *Snook*, C. A.)

Decontrol.—If the tenant at a rack rent of a dwelling-house of which he is in possession sub-lets part thereof, the sub-lessee is protected by the Acts. The part sub-let is not decontrolled by reason of the sub-lessor having been in actual possession. (*Harris* v. *Stacey*, C. A., approving *Domendietti* v. *Ryan*, Div. Ct.)

If, on the expiration of a tenancy, the tenant surrenders to the landlord certain rooms, accepting a lease of the remaining rooms, which lease complies with the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (2), the rooms so let are decontrolled. (*Kingsley* v. *Adler*, Div. Ct.)

New rules.—The Rent (Restrictions) Rules (S. R. & O. 1928, No. 970/L. 30, price 1*d.*), dated 22nd December, 1928, revoke paras. (2), (3), (4) and (5) of Rule 16 of the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, and substitute

therefor the following paragraph to stand as para. (2) of that rule:—

> "(2) The Court may either fix the amount of such costs or direct the scale upon which they are to be taxed. In the event of their not being so fixed or of no such direction being given, they shall be taxed upon column A of the Higher Scale."

Personal representative of a statutory tenant.—The interest of a statutory tenant does not vest in his executors. (*Lovibond (John) & Sons, Ltd.* v. *Vincent,* C. A.)

REPRESENTATION OF THE PEOPLE.

Director of company: Tenancy agreement with company—Registration.—A director of a company is qualified to be registered as a parliamentary voter if he occupies a room of not less than 10*l.* yearly value in the company's premises which has been let to him by the company under a tenancy agreement, even if he occupies the room only for the purpose of carrying on his business as director of the company, and not for his private business. (Scrutton, L.J., dissented on this latter point.) (*Frost* v. *Caslon; Frost* v. *Wilkins,* C. A.)

University parliamentary elections.—See the University Elections (Single Transferable Vote) Amending Order, 1929. (S. R. & O. 1929, No. 217.)

RESTRICTIVE COVENANTS.

Bungalow, covenant not to erect.—A covenant not to erect any building except a bungalow is not necessarily broken by putting up a building with more than one storey. A bungalow is a building of which the walls, with the exception of any gables, are no higher than the ground floor, and of which the roof starts at a point substantially not higher than the top of the wall of the ground floor. It is immaterial in what way the space left in the roof of a building so constructed is used. (*Ward* v. *Paterson,* Romer, J.)

RHODESIA.

See the Northern Rhodesia (Legislative Council) Amendment Order, 1929. (S. R. & O. 1929, No. 458.)

ROAD VEHICLES.

Lighting: Regulations.—On August 29th the Minister of Transport made the Road Vehicles Lighting Regulations, 1929, under the Road Transport Lighting Act, 1927. The new Regulations, which came into force on the 1st November last, supersede the Road Vehicles Lighting Regulations, 1928, set out in the "Year Book" for 1929, 1—206. The new Regulations re-enact the provisions of the old Regulations with the exception of Regulation 6, in which wider discretionary powers are conferred upon chief officers of police in regard to the exemption of motor vehicles in parking places from the requirements of the Lighting Act and Regulations.

ROADS.

The Local Government Act. 1929, Part III., very largely increases, as from the 1st April, 1930, the powers and duties of the county council with regard to roads. The county council is to be the highway authority for every main road in the county (sect. 29), and highway authority for any part of the county comprised in a rural district. (Sect. 30 (1).) Rural district councils cease to be highway authorities, but retain certain functions as respects rights of way and encroachments on wayside wastes, &c., and for making bye-laws. (Sub-sect. (4).) Further, sect. 31 transfers classified roads in urban districts to county councils, but by sect. 32 an urban district council with a population exceeding twenty thousand may claim to maintain and repair any county road in its district; and when this is done, the county council shall contribute to the cost of upkeep. (Sect. 33.) Further provisions for delegation of road functions by county councils to district councils are contained in sect. 35, when the district council will act as agents for the county council, which can exercise various controls over the district council as to work done on the roads.

Main roads are to be called County Roads, which term also includes any road for which the county council becomes highway authority by virtue of this Part of the Act. (Sect. 29.) Classified Road includes not only Class I. or Class II. roads, but also any road declared by the Minister of Transport "not to be inferior to those classes for the purposes of this Act." (Sect. 134.)

SAFEGUARDING OF INDUSTRIES.

Exemptions.—The following goods have been exempted from the duty imposed by sect. 1 of the Safeguarding of Industries Act, 1921, as amended by the Finance Act, 1926:—

Mercury vapour rectifiers.
Neodymium oxide.
Praseodymium oxide.
Yttrium oxide.

These are exempt till the 31st December, 1930, by the Safeguarding of Industries (Exemption) No. 3 Order, 1929 (S. R. & O. 1929, No. 643). The other exempting orders made since the 1929 "Year Book" (see p. 1—208) are spent.

SALE OF GOODS.

C.I.F. contract: September shipment—Goods loaded in October.—Goods were sold for September shipment c.i.f. Bombay. Bills of lading, dated September 30th, were forwarded as part of the shipping documents, that being the date when the carrying vessel arrived at the port of despatch, though the goods were not loaded and the ship did not sail till October. The sellers were held liable for breach of contract, and the measure of damages was the difference between the contract price and the value of the goods at the time of delivery at Bombay. (*Finlay (James) & Co., Ltd.* v. *N. V. Kwik Hoo Tong Handel Maatschappij,* C. A.)

Condition of fitness excluded.—If a ship is sold "to be taken with all faults and errors of description and without any allowance or abatement," this excludes any condition under sect. 14 of the Sale of Goods Act, 1893, of fitness for any particular purpose. (*Lloyds del Pacifico* v. *Board of Trade,* Roche, J.)

Delivery not in accordance with contract: Acceptance—Action for damages.—Under a contract for the sale of a thousand standards, about 85 per cent. red wood and about 15 per cent. white wood, a delivery was made and accepted by the buyers in which white wood largely exceeeded 15 per cent. It was held by Acton, J., that the buyers could not sue for damages. They could have rejected the consignment, but having accepted it, they could not sue for damages. (*Gabriel, Wade & English, Ltd.* v. *Arcos, Ltd.*)

Goods which have perished.—If at the date of a sale of seven hundred bags of nuts lying at a specified warehouse some hundred of the bags have, unknown to the parties, already ceased to exist, the contract is void. The case falls within the Sale of Goods Act, 1893, s. 6. (*Barrow, Lane and Ballard, Ltd.* v. *Phillip Phillips & Co., Ltd.*, Wright, J.)

Insurance.—Under a c.i.f. contract, which provides for insurance at the contract price, plus 5 per cent. on the net shipping weight, the conditions as to insurance are not satisfied by the seller taking out separate policies in which the goods and freight payable at destination are separately valued. The cargo having been destroyed by fire *en route*, the underwriters refused to pay the amount of the freight on the ground that none had become due. It was held that the sellers were liable in damages for the amount. (*Loders and Nucoline, Ltd.* v. *Bank of New Zealand*, Wright, J.)

Suger beet: Standard contract.—The standard contract for the sale of sugar beet provides for a price depending on variable factors with a minimum price. It also provides for a tonnage bonus of so much per ton to be paid to the seller, based on the number of tons handled by the factory during the season. This bonus is not to be added to the minimum in cases where the minimum would not otherwise be attained. The bonus is part of the price, and is therefore only operative where it brings that price above the minimum. (*Brown & Sons* v. *Lincolnshire Beet Sugar Company, Ltd.*, Div. Ct.)

SAVINGS BANKS.

The Savings Banks Act, 1929, which came into operation on 21st November, 1929, amends the law relating to savings banks, savings bank annuities, and the Post Office Register. It deals largely with matters of internal finance, and provides for the vesting of all property of a trustee savings bank in four custodian trustees to be appointed by the savings bank trustees out of their own number. Restrictions are imposed on the dissolution or abandonment of the business of a trustee savings bank, and power is given to such banks to undertake ancillary business calculated to encourage thrift.

The Trustee Savings Bank Act, 1863, s. 38, forbidding double accounts ceases to have effect save so far as it prevents an account at more than one trustee savings bank, as does also the Savings Banks Act, 1887, s. 1 (2), so that a person may now be a depositor with a trustee savings bank and also with the Post Office, and may have two accounts with the Post Office. There is a consequential amendment of the Savings Banks Act, 1891, s. 12 (1).

The limit on savings bank annuities is increased to 300*l.* per annum. Any description of Government Stock may be inscribed or registered in the Post Office Register to the credit of a depositor, and the stock register established by the Savings Bank Act, 1880, s. 3 (3), is made part of the Post Office Register.

SETTLED LAND—SETTLEMENT.

Annuity charged on land.—A perpetual annuity, created voluntarily, is a payment of a periodical sum for the "benefit" of the person receiving it within the meaning of sect. 1 (1) (v) of the Settled Land Act, 1925. Therefore, land subject to such a charge became, on the 1st January, 1926, settled land. (*Re Austen, Collins* v. *Margetts,* Clauson, J.)

Costs of lease.—Rockingham Castle was vested in trustees in trust for a tenant in tail, who was an infant. The trustees let the castle for one year certain, with options for renewals in the tenant for certain periods. Maugham, J., held that the estate agent's commission should be borne by income, the architect's fee by capital, and the solicitor's costs, so far as not paid by the

tenant, also by capital under sect. 73 (1) (xx) of the Settled Land Act, 1925. (*Re Watson, Brand* v. *Culme-Seymour.*)

Limitation against exercise by a tenant for life of his statutory powers.—A testator directed his trustees to retain 3,000*l.*, and apply the interest in paying the taxes, rates and repairs of his freehold house. He gave to his aunt the use of the house and furniture for her occupation during her life, but without power to sub-let. On the termination of her occupation, the house was to be sold, and certain legacies paid out of the proceeds and the 3,000*l.* The testator directed also that, after the sale, his nephew should have the furniture. Romer, J., held that the prohibition on sub-letting was void under sect. 106 of the Settled Land Act, 1925, and that the gift over on the aunt ceasing to occupy the house would not take effect if she did so by reason of her exercising her statutory powers, though it would be effective if she ceased to occupy for any other reason. If she sold the house, she would be entitled to the income of the proceeds, but not of the 3,000*l.* (*Re Simpson,* (1913) 1 Ch. 277), though if she let, the trust to apply the interest in paying taxes, &c. would still continue. After exercising her statutory powers, she would still be entitled to the furniture. (*Re Patten, Westminster Bank, Ltd.* v. *Carlyon.*)

Settled land or trust for sale?—A testator, who died in 1881, gave all his estate to trustees upon trust to pay the income of his freeholds and leaseholds to his widow for life, and, after her decease, to pay such income to his sons and daughters in certain shares which were to cease at death, with a proviso as to four quarterly payments to widows of sons, and, subject thereto, he gave his estate to the survivor of his children absolutely. The widow died in 1900. Three children were alive when the Law of Property Act, 1925, came into operation. Para. 4, added to Part IV. of the First Schedule of that Act by the Law of Property (Amendment) Act, 1926, Sched., was held to be inapplicable. Having regard to sect. 31 of the Wills Act, 1837, and following *Re Dawson's S. E.*, (1928) Ch. 421, the Court held that the entirety was vested in the surviving trustee of the will under para. 1 (1) of Part IV. of the First Schedule of the

Act of 1925, upon the statutory trusts. (*Re Barrat, Body* v. *Barrat,* Maugham, J.)

"Surviving husband": Power to appoint to—Divorce.—A marriage settlement gave the wife power to revoke the settlement as to part of the trust funds and appoint a life interest to any husband who might survive her. After divorce and remarriage, she exercised the power in favour of her second husband. She was again divorced, and married a third time and died. The appointment to the second husband was held to be invalid; he could not be described as a surviving husband, as he ceased to be the husband of his then wife upon the dissolution of the marriage. (*Re Williams' Settlement, Greenwell* v. *Humphries,* C. A.)

A similar decision was given by Maugham, J., in *Bosworthick* v. *Clegg.*

Trust to retain or sell.—Real estate was conveyed to trustees before 1926 on trust either to retain or sell, and to hold the trust fund on certain trusts. Eve, J., held that the land was settled land. The trustees had a discretion as to selling, and there was nothing in the context to show that a sale was intended. (*Re White, Pitman* v. *White.*)

[Had the settlement been made after 1925 there would have been a trust for sale by reason of the Law of Property Act, 1925, s. 25 (4).]

SHIPS—SHIPPING.

Anchor in improper position.—See *The Vectis,* Div. Ct.

Assessment of damages: Claims proved by average statement—Fee.—On a reference to assess damages arising out of a collision in the River Plate, the claims of cargo-owners against the fund paid into Court by the owners of the wrongdoing ship, who had limited their liability, were presented to the registrar in the form of an average statement. On taxation a fee of 1,000*l.* was allowed to the average adjusters in respect of the preparation of the claims. On a summons to review this item, Hill, J., held that the fee of 1,000*l.* was rightly allowed. Where there are a number of claims to be dealt with, an average state-

ment is a method of proof to which there is no objection in principle.

Bill of lading: Deviation.—Goods were shipped under a bill of lading "with destination to Liverpool." The shippers knew that there were two routes made use of by the shipowners' line, one route involving the vessel touching at Cartagena and the other not. It was held that the shippers could not claim that there had been deviation if the vessel touched at Cartagena. The case was not one where there was a statement that the ship was at one port and was bound for another, when the contract would be construed as involving the direct route and evidence to the contrary be inadmissible. There was here a mere statement of ultimate destination, and that destination was quite consistent with either of the two alternative courses. (*Frenkel* v. *MacAndrews & Co., Ltd.*, H. L.)

Bill of lading: Discharge into lighters.—A bill of lading provided that discharge should be into lighters, and that lighterage should be at the risk of the owners of the goods. The Carriage of Goods by Sea Act, 1924, was incorporated in the bill of lading, and where the Act was at variance with the terms of the bill of lading, the Act was to prevail. The goods were deposited safely in a lighter, but a case of other goods, which was being lowered into the same lighter, broke and holed the lighter, and the goods comprised in the bill of lading were damaged. In an action by the owners of the goods to recover damages from the shipowners, Roche, J., held (1) that the shipowners were not protected by the clause in the bill of lading, as the discharge into the lighter was not complete so long as there were other goods to be discharged into the lighter; but (2) that the exception relating to loss due to insufficiency of packing, in Article IV. r. 2 (n), was wide enough to cover the case of the packing of other goods; and (3) that the shipowners had shown that there was no negligence on the part of themselves or their servants, and were protected under Article IV. r. 2 (g). (*Goodwin, Fereira & Co., Ltd.* v. *Lamport and Holt, Ltd.*)

Bill of lading: Harter Act—Warranty of fitness of ship.—The incorporation of the Harter Act of the United States in a

bill of lading does not exclude a warranty by the shipowner that the ship is reasonably fit to carry the cargo loaded. The Act does not cut down the implied warranty to a mere undertaking to exercise due diligence in making the ship fit. (*The Erik Boye*, Hill, J.)

Centrocon charterparty: Freight.—The centrocon charterparty provides for payment of freight "at current rate of exchange for approved commercial bills on London." Wright, J., held that this refers to the rate on bills at ninety days, these being the bills customary in the trade, and not to the rate on sight bills. The charterparty must be construed in reference to the custom. (*Gripaios* v. *Kahl, Wallis & Co., Ltd.*)

Charterparty: Calculation of rate of discharge.—Where a charter provides for discharge at the rate of 125 tons per working hatch per day, with a proviso that consignees shall not be bound to accept more than 500 tons for any working day, the rate of discharge for the purpose of dispatch money is not 500 tons per day throughout, but is reduced by 125 tons as each working hold becomes empty. (*The Sandgate*, Div. Ct.)

Charterparty: Demurrage—"Reversible" days.—Under a charter for a number of successive voyages, which allows five "reversible" days for loading and unloading on each voyage, time saved on one voyage cannot be set off against time lost on another voyage. The expression "reversible" does not justify the inclusion of all the voyages together for the purpose of calculating demurrage. (*Verren* v. *Anglo-Dutch Brick Co.*, C. A.)

Charterparty: Time charter—Suspension of hire.—A time charter contained a provision for suspension of hire during any loss of time due to the chartered vessel being so injured in collision as to prevent working for more than twelve running hours. Bateson, J., held that this provision applied where the collision occurred before the vessel came on hire. There had been damage due to collision, which had prevented the working of the vessel for more than twelve running hours after she was already on hire: it was immaterial that the collision had taken place before she was on hire. (*The Essex Envoy.*)

Collision: Both vessels equally to blame—Costs.—If, in a collision at sea, both vessels are held to blame in equal degrees, the rule that neither party is awarded costs is not an absolute one. The costs are a matter of discretion. (*The Young Sid,* C. A.)

Collision: Damages.—The steamship *York* suffered damage by a collision with another ship, the owners of which admitted liability. The damage did not render the *York* unseaworthy, and she continued trading without effecting repairs. Her owners then agreed to sell her, and under the contract of sale they agreed to prepare her for inspection by the buyer. During the time that she was prepared for inspection, and therefore unable to trade, the repairs rendered necessary by the collision were done. It was held that the owners could not recover, as part of the collision damages, the loss and expenses in respect of the detention while the ship was being repaired, for they had by their contract prevented her from earning profits during that time. (*The York,* C. A.)

Where a vessel engaged in commercial service is detained as a result of a collision due to the fault of another ship, the damages are not necessarily the cost of chartering another vessel for the period of detention. (*The Ikala,* H. L., affirming the Court of Appeal (1929 Y. B. 1—218).)

Collision: Narrow channel rule—Navigable channel divided into two narrow channels.—See *The Zillah,* Hill, J.

Collision: Sound signals in fog—"Under way"—Vessel turning in river.—See *The Palembang,* Duke, P.

Dockowner: Limit of liability.—Sect. 2 (1) of the Merchant Shipping (Liability of Shipowners and Others) Act, 1900, limits the liability of (*inter alios*) dockowners for damage to vessels and goods. The dockowners are not liable beyond an aggregate amount not exceeding 8*l.* for each ton of the tonnage of the largest registered British ship which has, during the last five years, been within the "area" over which dockowners perform any duty or exercise any power. A vessel was damaged while under repair in a dock at Blackwall. The dockowner had a controlling interest in a company owning a dock at Falmouth. Hill, J., held

that, whether or no the Blackwall dockowner could be said to "exercise any power" over the Falmouth dock, Falmouth was not in the same "area" as Blackwall, so that the liability of the dockowner was not increased by the fact that a larger vessel had been in the Falmouth than in the Blackwall dock during the preceding five years. (*The Ruapehu*, No. 2.)

Fees.—By the Merchant Shipping (Fees) Amendment Order, 1929 (S. R. & O. 1929, No. 354), the fees specified in the Schedule to the Merchant Shipping (Fees) Order, 1924, as amended by the Merchant Shipping (Fees) Amendment Order, 1926, except those specified in Parts 16, 19 and 20 of the said Schedule, were reduced by 16 2/3rds per cent. The Merchant Shipping (Fees) Amendment Order, 1927, was revoked.

"Flare-up light" in Article 12 of the Regulations for Preventing Collisions at Sea, 1910, means an ordinary flame, and not a specially coloured flame. The regulation does not authorise a vessel, for the purpose of attracting attention, to show a green or a red light other than the lights which she is required by the regulations to carry. (*The Tovarisch*, Hill. J.)

General average.—For a decision on general average under the York—Antwerp Rules, 1924, see *Vlassopoulos* v. *British and Foreign Marine Insurance Co.* (Roche, J.)

Harbour authorities: Liability for damage.—If a ship is damaged at berth owing to defective berthing accommodation, the harbour authorities are liable to the shipowners, although the harbour-master, who knew of the defect, acted as ship's agent for the purpose of reporting the ship and providing funds for labour. The harbour-master's knowledge of the defect could not be imputed to the shipowners, for it was not knowledge acquired in the course of his agency, which was a restricted one, and did not begin till the ship had reached her berth. (*The Hayle*, Bateson, J.)

Lights: Dumb barge in Thames.—A riding light must be exhibited by a dumb barge which is moored alongside and on the shore side of a vessel moored at a tier in the Thames. She does

not come within proviso (a) or (c) of Bye-law 14 of the Port of London River Bye-Laws, 1914—1926. (*The Princess,* Hill, J.)

Negligence.—For discussion of the Admiralty principles, see *The Vectis,* Div. Ct.

Prevention of accidents.—See the Merchant Shipping (Life-Saving Appliances) Rules, 1929. (S. R. & O. 1929, No. 315.)

Seamen: Neglect of duty—Prosecution—Evidence.—It is not a condition precedent to a prosecution of seamen under sect. 225 of the Merchant Shipping Act, 1894, for combining together to neglect duty that the offence shall have been entered in the ship's log. The justices in such a case have a discretion, and may refuse under sect. 228 of the Act to accept other evidence, but are not deprived of jurisdiction. (*Patterson* v. *Robinson,* Div. Ct.)

Unloading: Stevedores' liability for injury caused by defective rope.—A steamship was being unloaded partly by stevedores employed by the shipowners, who hoisted bags of grain from the hold to the deck, and partly by dock porters employed by the receivers of the cargo. The rope used to effect these operations was the property of the stevedores, who employed a man to inspect and test it, use of the rope being allowed gratuitously to the dock porters. Owing to a defect in the rope, a dock porter was killed. The stevedores were held liable in an action brought by his widow and children. The facts showed a duty of care on the part of the stevedores. (*Chapman or Oliver* v. *Saddler & Co.*, H. L.)

Warlike operations.—On December 25th, 1918, a collision occurred between the *Trevanion* and the *Roanoke,* and the *Trevanion* was seriously damaged. The *Trevanion* was under requisition to the British Government on the terms of Charterparty T. 99, by clause 19 of which the Admiralty undertook liability for all consequences of warlike operations. She was on a voyage from New York to Portland laden with oats. The *Roanoke* was a mine planter in the service of the United States Navy, and was proceeding to Virginia with mines on board. The collision was due to the joint negligence of both vessels, and both were equally to blame. The arbitrator found that the *Roanoke* was engaged in a warlike operation, in spite of the armistice, and that the

collision was in consequence of a warlike operation, and made an award in favour of the owners of the *Trevanion*. The House of Lords upheld the award. (*Board of Trade* v. *Hain Steamship Co.*)

Yacht: Lloyds' survey—Inaccurate certificate.—If the owner of a yacht applies for it to be registered at Lloyds, and the surveyor employed by Lloyds certifies incorrectly that the yacht is in good condition, the surveyor is not liable to the owner of the yacht for loss due to his having acted on the certificate. There is no duty on the part of the surveyor to the owner, only to the society by whom he is employed. (*Humphrey* v. *Bowers*, Rowlatt, J.)

York-Antwerp Rules, 1924.—These rules were drawn up so that the parties, if they choose to adopt them, may not be troubled with any question as to what general law will apply. The Rules first lay down general principles and then deal with specific cases, not only by way of illustration, but in order to make certain what the Rules provide in those specific cases. The Rules must be read as a whole and not as two codes, one of which may contradict the other. (*Vlassopoulos* v. *British and Foreign Marine Insurance Co.*, Roche, J.)

SIERRA LEONE.

Legislative Council.—The Sierra Leone (Legislative Council) Amendment Order, 1928 (S. R. & O. 1928, No. 1103), substitutes a new article for article 5 in the Sierra Leone (Legislative Council) Order, 1924.

SOLICITORS.

Articles for four years.—An order was made by the Master of the Rolls on July 9th, 1929, relating to four years' articles. It provides two new methods whereby a year of articles can be avoided. One method is to pass the London Matriculation (or some exempting examination)—Latin being essential in either case—and then pass the external Intermediate London LL.B., after attending the full course for that examination to the satisfaction of the East Midland School of Law. The other is to pass the Law

Society's Preliminary, or some exempting examination—Latin being compulsory—then to attend a prescribed course at the Law Schools of the University Colleges of South Wales and Monmouthshire or of Swansea, and finally pass a qualifying examination as defined by the Order.

The Order is set out in the Law Society's *Gazette* for August, p. 213.

Authority to receive money.—A solicitor is not authorised by his general authority to receive money for clients. The solicitor of an administratrix obtained his client's signature to a claim for payment of monies under a policy of insurance. By fraudulently filling in this claim as an authority to pay himself, and by forging his client's receipt, he obtained payment to himself. It was held that the insurance company were not thereby discharged from liability under the policy, the payment to the solicitor not, in the circumstances, being a payment to the client. (*Edmiston* v. *Scottish Temperance and General Assurance Company, Ltd.*, Astbury, J.)

Ontario.—The Colonial Solicitors' Act, 1900, has been extended to the Province of Ontario, Canada. (S. R. & O. 1928, No. 1067, price 2*d*.)

SPIRITS.

Bottling in bond.—See the Spirits (Bottling in Bond) Regulations, July 11th, 1929 (S. R. & O. 1929, No. 586), which superseded the regulations of the same name made in 1927.

STAMPS.

Cancellation.—In an unreported case referred to in the *Solicitors' Journal*, Vol. 73, p. 456, Talbot, J., held that the sixpenny adhesive stamp on a written agreement was not properly cancelled by a line drawn across it by a pen. This appears inconsistent with *McMullen* v. "*Sir Alfred Hickman*" *Steamship, Ltd.* (1902), 71 L. J. Ch. 766.

Instruments securing sums payable periodically at intervals less than a year.—The Council of the Law Society have discussed this question with the Board of Inland Revenue. The Board

states that, except in cases which are governed by the decision in *Lewis and Lewis* v. *Commissioners of Inland Revenue*, (1898) 2 Q. B. 290, stamp duty will not be claimed on the basis of the annual amount of the periodical payments unless the continuance of the payments is dependent solely on life. Accordingly instruments securing weekly or monthly payments which are not dependent on life, or which being dependent on life, are also determinable in some other event, *e.g.*, bankruptcy, assignment, re-marriage, will be stamped on the basis of the amount of the weekly or monthly payment.

Personal representative requesting company to register him as shareholder.—A sixpenny stamp is not necessary on the ordinary letter of request from a personal representative of a deceased shareholder requesting the company to register him as shareholder. (See letter of the Secretary of the Chartered Institute of Secretaries in Law Society's *Gazette*, August, 1929, p. 219.)

Resettlement.—On a resettlement of property following a settlement containing powers of revocation and new appointment, freeholds were conveyed subject (1) to certain family charges and powers of charging, (2) to certain prior life estates, and (3) to the powers of revocation and new appointment contained in the original settlement. The Commissioners of Inland Revenue, in estimating the value of the properties for the purposes of stamping under the Finance (1909-10) Act, 1910, made an allowance in respect of items (1) and (2), but were of opinion that item (3) was to be disregarded as an overriding interest and refused an allowance in respect thereof. The Court of Appeal (Lord Hanworth, M.R., and Slesser, L.J., Lawrence, L.J., dissenting) held that the Commissioners were justified in the view they had taken. (*Stanyforth* v. *Commissioners of Inland Revenue*.)

Voluntary settlement of Government stocks, other stocks and life policies.—Where a voluntary disposition *inter vivos* includes Government stocks, other stocks and life policies, *ad valorem* "settlement" duty is payable in respect of the Govern-

ment stock as well as of the other properties included. (*Ansell* v. *Commissioners of Inland Revenue*, Rowlatt, J.)

SUNDAY.

Licence for street trading.—A licence for street trading on Sunday under the London County Council (General Powers) Act, 1927, can be refused on the ground that Sunday trading is forbidden by the Sunday Observance Act, 1677. The Council is entitled to say that it will not give a licence to do what is unlawful by statute. (*Clifton* v. *Holborn Borough Council*, Div. Ct.)

SUPREME COURT.

Appeal from judge in chambers: Arbitration.—Where an application is made to a master in chambers for an order revoking a submission to arbitration, and an appeal is brought to the judge in chambers, any further appeal must be brought to the Court of Appeal and not to a Divisional Court. It is a matter of practice and procedure within sect. 31 (3) of the Judicature Act, 1925, and Ord. LIV. r. 23; for by sect. 1 of the Arbitration Act, 1889, a submission to arbitration has the same effect in all respects as if it had been made an order of Court. (*Simbro Trading Co., Ltd.* v. *The Photograph (Patent) Corporation, Ltd.*, C. A.)

Appeal: Printing of evidence in Court below.—The Court does not insist on printing or lithotyping under Ord. LVIII. r. 12, and Ord. LXVI. r. 3A, in every case. Transcripts prepared in plain and legible manner on paper of fair substance are accepted. (See Law Society's Gazette, November, 1929, p. 8.)

Appearance by person served as partner.—By Rule 8 of the No. 1 Rules of 1929, Rule 7 of Ord. XLVIIIA. is revoked, and the following Rule substituted:—

> "7. Any person served as a partner under Rule 3 of this Order but who denies that he was a partner or liable as such at any material time may enter an appearance stating therein that he does so as 'a person served as a partner in the defendant firm, but who denies that he was a partner at any

material time.' Such appearance as long as it stands shall be treated as an appearance for the firm. If an appearance is so entered (A) the plaintiff may apply to set it aside on the ground that the person entering it was a partner or liable as such, or may leave that question to be determined at a later stage of the proceedings; or (B) the person entering the appearance may apply to set aside the service on him on the ground that he was not a partner or liable as such; or he may at the proper time deliver a defence denying either or both (1) his liability as a partner, (2) the liability of the defendant firm in respect of the plaintiff's claim. An order may on the application of either party at any time be made that the questions as to the liability of the person served and the liability of the defendant firm may be tried in such manner and at such time or times as the Court or judge may think fit."

Appearance in person.—Rule 3 of the No. 1 Rules of 1929 allows a defendant who wishes to appear in person to enter appearance by post. It provides:—

"8A. In the case of a defendant desiring to enter an appearance in person, he may in lieu of delivering to the proper officer the memorandum of appearance and the duplicate thereof, enter the appearance through the post by sending to the proper officer by prepaid registered letter—

(1) a memorandum of appearance and a duplicate thereof both fully filled up;
(2) a postal order for 2*s*. 6*d*.;
(3) a notice of appearance and a copy thereof all duly filled up; and
(4) two envelopes each sufficiently stamped, one addressed to the plaintiff's solicitor (or to the plaintiff if he sues in person) at the address for service, and the other addressed to the defendant entering the appearance.

"On receipt of these documents the proper officer shall forthwith enter the appearance as of the date when he receives the memorandum and shall seal the duplicate with the official

seal showing the date on which it is sealed and shall seal the notice of appearance with the official seal showing the date of the appearance and shall post the notice to the plaintiff or his solicitor and shall post the duplicate to the defendant and shall file the copy of the notice."

When appearance is thus entered through the post, Ord. XII. r. 9, does not apply; so that the defendant need not himself give notice of appearance. (R. S. C. (No. 2), 1929.)

Consolidation of actions.—The principle on which the Court should act in making a consolidation order of several actions was discussed in *Horwood* v. *Statesman Publishing Co., Ltd., and Others*. The Court of Appeal held that where joinder of plaintiffs would be permissible under Ord. XVI. r. 1, the Court has power to make a consolidation order under Ord. XLIX. r. 8. (The headnote to *Lee* v. *Arthur* (1909), 100 L. T. 61, which states that the order can only be made when the facts are "precisely similar" is not accurate. *Per* Sankey, L.J.)

Costs: Interlocutory proceedings.—If the costs of interlocutory proceedings (*e.g.*, the costs of a commission to take evidence) have been reserved for the trial, and are not then mentioned to the Court and dealt with at the trial, an order can be made subsequently dealing with these costs. The Court will do what justice demands, and allow the costs if it would have done so had the matter been mentioned at the trial. (*Cobbold* v. *Garrett*, Eve, J.)

Counterclaim, exclusion of.—Rules 6 and 7 of the No. 1 Rules of 1929 amend Rule 3 of Ord. XIX. and Rule 15 of Ord. XXI. with regard to the Court's power to exclude a counterclaim if it cannot be conveniently disposed of in the action. The two Rules did not quite tally in this respect. Rule 6 amends Rule 3 of Ord. XIX. by inserting at the beginning the words, "Subject to the provisions of Rule 15 of Ord. XXI.," and by omitting the power of the Court, on application before trial, to refuse to allow the defendant to avail himself of the counterclaim; and Rule 7 amends Rule 15 of Ord. XXI. by striking out the words at the

end, which allow the Court to exclude the counterclaim on application before reply, and substituting therefor the words, "the Court or a judge may at any time order that such counterclaim be excluded."

Death of judge during hearing.—If proceedings without a jury are partly heard and the presiding judge dies, such proceedings can be continued by another judge if all parties consent, and the judge reads the shorthand notes and consults with his colleagues. So held by the Railway and Canal Commissioners, explaining the dictum of Scrutton, L.J., in *Coleshill* v. *Manchester Corporation*, (1928) 1 K. B. 776. (*Re British Reinforced Concrete Engineering Co., Ltd.*)

Debenture holders' action: Form of judgment.—The form of judgment appointing a receiver does not now direct the receiver forthwith to pay the preferential debts out of any assets coming to his hands. This direction is omitted in view of the decision in *Re Glyncorrwg Colliery Co.*, (1926) Ch. 951. The judgment directs an inquiry whether there are any, and what, preferential claims. See form of judgment in *Re Burradon & Coxlodge Coal Co., Ltd.*

"Disbursements," agreement to pay.—An action was settled on the terms that the defendants should pay a specified sum for the plaintiff's costs and all items of the plaintiff's "disbursements." Eve, J., held that "disbursements" included only sums which could properly be described as a disbursement in a solicitor's bill of costs, and that it was open to the defendants to object to pay any given item on the ground that it was an excessive charge. (*Barnato* v. *Joel.*)

Discovery of documents: Title deeds—Privilege.—If, in an action for trespass, which involves a dispute as to the boundaries of the plaintiff's and defendant's land, the plaintiff, in his affidavit of documents, claims privilege for documents of title on the ground that they relate solely to his title and do not support the defendant's case, his claim cannot be questioned unless the Court can see or be reasonably certain upon the plaintiff's affidavit that he

has erroneously represented or misconceived the nature of the documents. (*Chowood, Ltd.* v. *Lyall*, Clauson, J.)

District registries: Form of order under County Courts Act, 1919, s. 2.—The Lord Chancellor has approved the use in district registries of Form No. 45 in Appendix K to the R. S. C. The form is the form of order to give security or try the action in a County Court under the County Courts Act, 1919, s. 2.

District registries: Specially indorsed writ, note on.—On the 14th December, 1928, the Lord Chancellor approved the use in district registries of the following note upon a writ specially indorsed under Ord. III. r. 6, the use of which has been prescribed by the Masters for the Central Office:—

Note.—"If the defendant enters an appearance he must also deliver a defence within ten days after the last day of the time limited for his appearance, otherwise judgment may be entered against him without notice, unless he has in the meantime been served with a summons for judgment or for directions."

Execution: Claim to goods seized.—Where a claim is made to or in respect of any goods or chattels taken in execution under the process of the Court, it must now have on it *the address of the claimant, and such address will be the address for service of the claimant*. (Rule 10 of the No. 1 Rules of 1929, which substitutes a new Rule for Ord. LVII. r. 16.)

Service of an interpleader summons on the claimant may be effected at the address for service either by personal service upon the claimant or by registered post. (Rule 11 of the No. 1 Rules of 1929, substituting a new Rule for Ord. LVII. r. 17.)

Execution: Elegit.—If a lessee has mortgaged his lease by sub-demise, his interest is extendible by writ of elegit; he still has a legal interest in the land. (*Smith* v. *Tsakyris*, C. A.)

Fees: Examination of judgment debtor before Examiner.—By the Supreme Court Fees (Amendment No. 2) Order, 1928 (S. R. & O. 1928, No. 1010/L. 33), a new fee is inserted in the Schedule to the Supreme Court Fees Order, 1924, to follow Fee No. 17, which deals with examination of a witness (including a

judgment debtor) before an officer of the Court. The new fee is:—

First Column.	Second Column.	Third Column.
Item.	Fee.	Document to be stamped.
	£ s. d.	
"17A. For an examination as to the means of a judgment debtor under Order XLII., Rule 32 or Rule 33, before an Examiner of the Court:—		
(a) on making the appointment	1 5 0	The Order.
(b) for each hour or part of an hour after the first two hours	0 10 6	The Order."

Germany: Service of proceedings.—The Lord Chancellor, on March 5th, 1929, directed that the Order of August 19th, 1921, ordering that Ord. XI. r. 8, should apply to Germany, be suspended as and from the 15th day of March, 1929, being the date upon which the Convention between the United Kingdom and Germany respecting legal proceedings in civil and commercial matters, signed on March 20th, 1928, came into force.

Insurance company: Investment of deposit.—An application by an insurance company for variation of the investment of its deposit under the Assurance Companies Act, 1909, s. 2, is to be made by summons and not by petition. (Ord. LV. r. 2 (8); Board of Trade Order of June 6th, 1910, r. 4 (a).) (*Re Canada Life Assurance Company*, Eve, J.)

Interpleader: Appeals.—Rule 9 of the No. 1 Rules of 1929 clears up the law as to appeals in interpleader proceedings—as to which there were numerous decisions (see *Van Laun & Co.* v. *Baring Brothers*, (1903) 2 K. B. 277, and *Republica de Guatemala* v. *Nunez*, (1927) 1 K. B. 669)— by substituting a new Rule for Rule 11 of Ord. LVII. Sect. 17 of the Common Law Procedure Act, 1860, which made judgments in interpleader proceedings final, is repealed by Rule 12 of the new Rules. The new Rule 11 runs as follows:—

"11.—(1) The decision of the Court or a judge in a summary way under Rule 8 of this Order and the decision

of the Court or judge on a question of law under Rule 9 thereof shall be final and conclusive against the claimants and all persons claiming under them unless leave to appeal is given by the Court or judge or by the Court of Appeal.

"(2) Where an interpleader issue is tried by a judge alone, an appeal shall lie from any decision arrived at or any judgment directed by the judge.

"(3) Where an interpleader issue is tried by a judge with a jury, an application for a new trial or to set aside the verdict finding or judgment may be made.

"(4) Where the Court or a judge tries an interpleader issue and finally disposes of the whole matter under Rule 13 of this Order, an appeal shall lie from the decision or judgment.

"(5) Any appeal under this Rule shall be to the Court of Appeal and shall be deemed to be interlocutory.

"(6) This Rule does not apply to appeals from a Master or District Registrar."

Jurisdiction: Appeal from sheriff's inquisition.—An appeal from the verdict and return made on an inquisition before the sheriff of London under a writ of elegit lies to the Court of Appeal. (*Smith* v. *Tsakyris,* C. A.; sect. 26 (2) (d) of the Supreme Court of Judicature (Consolidation) Act, 1925, and *William Radam's Microbe Killer Co., Ltd.* v. *Leather,* (1892) 1 Q. B. 85, and *Smythe* v. *Wiles,* (1921) 2 K. B. 66.)

Jury, communication from, during trial: Judge's duty.—If, while the case for the plaintiff is still proceeding, the jury make a communication to the judge showing that they desire to find a verdict for one of the parties, the judge is not bound to discharge the jury and order a new trial, though he may do so if he thinks the jury's premature intervention makes it impossible for the trial to proceed with justice. He may, in his discretion, allow the trial to proceed if he thinks it can still be done with justice. It is also a matter for the judge's discretion whether counsel should be informed of the jury's communication. (*Hobbs* v. *Tinling & Co.*, C. A.)

Libel action: Cross-examination of plaintiff.—In a libel action the plaintiff may be cross-examined as to an act of misconduct not mentioned in the defendant's notice under Ord. XXXVI. r. 37. But such questions are only admissible on the question of credit, and the jury should be directed that the questions are only admissible on this ground, and are not relevant to mitigate damages. Failure so to direct the jury will make a new trial necessary. (*Hobbs* v. *Tinling & Co., Ltd.*, C. A.)

Libel: Defence of fair comment—Particulars.—Where the defendant in an action for libel pleads that the words complained of are fair comment, made in good faith and without malice, on matters of public interest, he is entitled to give particulars of the facts upon which he based his comments, although those facts are defamatory of the plaintiff and there is no plea of justification. (*Burton* v. *Broad*, C. A.)

Married woman: Judgment against—Second action against—res judicata.—An executor sued a married woman in the King's Bench Division to recover a sum of money forming part of the estate, which had been paid to her, as a trustee, and misapplied. He recovered judgment against her in the form settled in *Scott* v. *Morley* (1887), 20 Q. B. D. 120. Execution proved ineffective. It was held that he could not afterwards sue her in the Chancery Division, asking for a declaration that she was a trustee of the money upon trust to pay it to him as executor, with the object of having her attached. The matter was *res judicata*. (*Green* v. *Weatherill*, Maugham, J.)

Money in Court: Payment out—Petition or summons?—Where a fund in Court in an administration action exceeds 1,000*l.*, an order can be obtained on summons under Ord. LV. r. 2, sub-r. 13, for payment out of the fund of the expenses of repairs and improvements amounting to 200*l.* odd. The application need not be made by petition. (*Re Terry, Terry* v. *Terry*, Clauson, J.)

Motion, notices of.—Romer, J., stated in April that it was most important that notices of motion in the Chancery Division should be properly framed, and, in his opinion, the costs of having them settled by counsel ought, in general, to be allowed.

Order giving leave to defend.—The Lord Chancellor, under date 5th July, 1929, has, in pursuance of Ord. LXI. r. 33, approved a new form of order (H. 9) giving leave to defend on condition of the action being entered in the Short Cause List.

Property Act judges: Ord. LIVd.—The Lord Chancellor has nominated Clauson, J., to be the single judge to hear and determine such appeals under Ord. LIVd. as in pursuance of that Order are to be heard and determined by a single judge of the Chancery Division, and Clauson and Luxmoore, JJ., to be the two judges of the Chancery Division constituting a Divisional Court for the purpose of hearing and determining such appeals under the said Ord. LIVd. as, in accordance with the provisions of that Order, are to be heard and determined by a Divisional Court of the Chancery Division.

[Ord. LIVd. governs appeals and references under the Law of Property Acts, the Settled Land Act, 1925, and the Land Registration Act, 1925.]

Representative of estate: Practice.—When an order has been made under Ord. XVI. r. 46, appointing a person, *e.g.*, the Official Solicitor, to represent an estate, the order should be left at the Central Office for entry, and the person appointed should file a notice of his appointment and the name and address of his solicitor, and thenceforward the title of the proceedings should contain the name of the person appointed, described as "A. B., appointed by order dated, &c. to represent the estate of C. D., deceased." The person appointed will then be entitled to be represented in Court at the hearing as a party. (*Re Prosser, Prosser* v. *Griffith,* Clauson, J.)

Rules made during the year include R. S. C. (Third Party), 1929 (S. R. & O. 1929, No. 361, L. 8, price 2*d.*); R. S. C. (No. 1), 1929 (S. R. & O. 1929, No. 424, L. 11, price 2*d.*); R. S. C. (No. 2), 1929 (S. R. & O. 1929, No. 605, L. 15).

Service out of jurisdiction: Originating summons, petition, &c.—Rule 2 of the No. 1 Rules of 1929 has amended Rule 8A of Ord. XI. Formerly, where the defendant was neither

a British subject nor in British dominions, service had to be effected by notice under Rule 6 of the Order. The new Rule alters this by adding a further paragraph to Rule 8A. This paragraph runs:—

> "(e) When the person on whom an originating summons petition notice of motion or other originating proceeding or a summons order or notice is to be served is neither a British subject nor residing within British dominions, a copy of the originating summons petition notice of motion or other originating proceeding or summons order or notice instead of the original shall be served, together with an intimation in writing that a process in the form of the copy has been issued or otherwise launched."

Set-off.—F.'s motor sustained damage in a collision due to P.'s negligence. The insurance company with whom F. was insured contracted with P. to repair F.'s car; the company was not able, in an action by P. for the cost of these repairs, to set off the claim to be indemnified against the result of P.'s negligence, which arose in favour of F., the amount of the liability of the company being still unsettled at the date when P. commenced proceedings. The company were not subrogated to F.'s claim for indemnity till the amount was ascertained. (*Page* v. *Scottish Insurance Corporation; Forster* v. *Page*, C.A., overruling Salter, J., **1**—247.)

Specially indorsed writ: Specific chattel.—Rule 1 of the No. 1 Rules of 1929 revokes Ord. III. r. 6, and substitutes a new Rule relating to special indorsements. The chief alteration is that a writ can now be specially indorsed not only where the claim is to recover a debt or land—as to these there are only slight verbal alterations—but also "where the plaintiff seeks to recover possession of a specific chattel with or without a claim for the hire thereof or for damages for its detention."

Consequential on this alteration, Rule 4 of the new Rules provides that in paragraph (a) of Rule 1 of Ord. XIV., after the words "(with or without rent or mesne profits)," there shall be inserted the words "or for the delivery up of a specific chattel";

and Rule 5 adds the following paragraph to Rule 1 of Ord. XIV.:—

> "(c) Where the plaintiff's claim is for the delivery up of a specific chattel (with or without a claim for the hire thereof or for damages for its detention) the judge may make an order for the delivery up of the chattel without giving the defendant any option of retaining the same upon paying the assessed value thereof, and such order if not obeyed may be enforced by a writ of attachment or a writ of delivery."

Third party procedure.—By the Rules of the Supreme Court (Third Party), 1929, Rules 48 to 55 of Ord. XVI. are revoked, and third party procedure is dealt with by a new Order—Ord. XVIA. The most important changes made are:—

(1) The third party claim is no longer restricted to cases where a claim is made for contribution or indemnity, but is equally applicable where the defendant claims against the third party:—

(1) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action, and substantially the same as some relief or remedy claimed by the plaintiff; or

(2) that any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant, and should properly be determined not only as between the plaintiff and the defendant, but as between the plaintiff and defendant and the third party, or between any or either of them.

(2) Fresh forms of third party notice are prescribed.

(3) It was held in *Re Wilson,* 45 Ch. D. 266, that a third party notice was inapplicable to proceedings commenced by originating summons. Since Rule 2 of the new Order provides that there shall be served with the third party notice a copy of the writ of summons "or originating summons," the law appears to be altered in this respect.

(4) There is now express provision as to the mode of application for leave to issue a third party notice, which is to be *ex parte* unless express direction is made for a summons to the plaintiff.

(5) The third party is now required to appear either (as hitherto) within eight days " or " within such further time as may be directed by the Court or a judge and specified in the notice.

(6) An amended wording gives somewhat wider results to default of appearance, and these results are extended also to default of defence.

(7) More elaborate and somewhat wider provisions than formerly deal with the case where a third party appears.

(8) The provision under which a third party can himself bring in a third party is continued, and it is now expressly made clear (what was, however, apparently even formerly the case) that the ultimate third party may himself bring in a further third party, and so on *in infinitum*.

(9) It is now expressly provided (in confirmation of *Towse* v. *Loveridge*, 25 Ch. D. 76) that a defendant desiring to serve a co-defendant with a third party notice may do so without leave.

Vexatious litigation: General injunction.—Under sect. 51 of the Judicature Act, 1925, the Court can make an order that no legal proceedings shall be instituted without the leave of the High Court. The section does not enable the Court to limit the order to the institution of proceedings against one person only: the object of the section is to restrain a person from instituting vexatious proceedings against any person. (*Re Hutchinson*, C. A.)

SURETY.

Hire-purchase agreement: Time given to pay instalment.—A. took a motor car from B. under a hire-purchase agreement. C. guaranteed the performance of the agreement by A. B., for valuable consideration, gave A. further time for payment of one instalment. C. was thereby altogether discharged from liability. The contract was one entire contract. (*Midland Motor Showrooms* v. *Newman*, C. A., distinguishing *Croydon Commercial Gas Co.* v. *Dickinson* (1876), 2 C. P. D. 46.)

TEA.

Duty.—This was repealed as from the 22nd April, 1929, by sect. 5 of the Finance Act, 1929.

TELEGRAPHS.

The Imperial Telegraphs Act, 1929, authorised the sale to the "Communications Company" of the telegraph undertakings established under the Pacific Cable Acts, 1901 to 1924, and the West Indian Islands (Telegraph) Act, 1924, and of certain submarine telegraph undertakings in the possession of the Postmaster-General.

THEATRES.

Application for licence.—It is not competent for a licensing authority to lay down a general rule that licences for theatres will not be granted without restriction, but only on condition that no liquor licence be applied for. Each case must be heard on its merits. (*R.* v. *Cardiff Corporation,* Div. Ct.)

TITHE RENTCHARGE.

Recovery: Rules.—The Tithe Rentcharge Recovery Rules, 1891, as amended in 1926 and 1927, have been further amended by the Tithe Rentcharge Recovery Rules, 1929 (S. R. & O. 1929, No. 109/L. 2, price 1*d.*), which came into force 1st April, 1929.

The parts affected are Rules 13 and 46, and Forms 1, 2 and 3. And a new Rule is added after Rule 23.

Rule 13.—In Rule 13 in the expression "or cannot ascertain the owner of the lands," the word "and" is substituted for the word "or."

The effect of this alteration is that, to entitle the owner of tithe rentcharge to take proceedings for its recovery against the owner of the land without naming him, the owner must state in his notice of application that he does not know, *and* cannot ascertain, the owner of the land. In other words, he must make an effort to discover who the owner of the land is.

Rule 23A.—The following rule is inserted after Rule 23:—

"23A.—(1) Where the officer appointed to distrain finds that any of the lands referred to in the order for distress are not in the occupation of the owner but of a tenant, he shall

make a report thereon to the Court, and the Court may make an order directing that the order for recovery be executed in manner provided by the Act where the lands are not occupied by the owner.

"(2) Where an order is made under this Rule, the Court shall appoint the person who has been appointed to distrain upon the lands to be the receiver, unless for special reasons the Court otherwise determines."

Where the owner is in occupation, arrears of tithe rentcharge are recovered by distress. Where he is not in occupation, the arrears are recovered by a receiver. Rule 23 laid down the procedure to be adopted when the receiver finds that the owner is in occupation. The new Rule deals with the converse case, *i.e.*, where an officer is appointed to distrain, but he finds that the owner is not in occupation.

Rule 46 is revoked and the following rule substituted:—

"46. Where any proceeding under the Act is taken against an owner of lands without naming him, then if there is any person claiming to be in actual occupation of the land as tenant or as servant of the owner, service of any notice or other documents on the owner may be effected as follows:—

(1) A copy of the notice or document shall be delivered to such person, or to a member of his family residing with him upon the land and apparently not less than sixteen years old, with a written direction to forward the same to the person to whom he pays his rent, or in whose service he is; and

(2) One or more copies of the notice or documents shall be posted on some conspicuous part or parts of the lands."

Under the old Rule the copy of the notice or document had to be "delivered at the house of the occupier." Now it has to be delivered to the tenant or servant or a member of his family.

Form 1.—In Form 1 the following paragraphs are substituted for the second paragraph:—

"The owner of the said lands is [*insert name, address and*

description of the owner of the lands], (*or* I do not know and cannot ascertain the owner of the lands).

"The owner is the sole occupier of the lands."

This and the next Rule are consequential on the amendment effected in Rule 13.

Forms 2 and 3.—In Form 2 and Form 3, in the expression "*or* cannot ascertain the owner of the lands" the word "and" is substituted for the word "or."

Redemption: Basis.—For the purpose of the redemption of tithe rentcharge for which application is made after the 30th September, 1929, until further notice, the compensation for redemption is twenty-one times the net amount of the tithe rentcharge after the deductions prescribed by the Tithe Acts, 1918 and 1925, have been made.

TOWN PLANNING.

The Local Government Act, 1929, Part III., which will come into force on the 1st April, 1930, makes some alterations. It enables county councils and other local authorities to act jointly in preparing town-planning schemes (sect. 40); it authorises the Minister of Health to combine councils for the purpose of preparing or adopting a scheme (sect. 41); and the powers of county councils are increased by sect. 42, which enables a county council to be made the responsible authority for enforcing schemes, and by sect. 43, which enables district councils to relinquish their functions under the Town Planning Act, 1925, to the county council.

TRADE BOARDS.

Cotton waste.—See the Waste Materials Reclamation Trade, Great Britain, Cotton Waste Branch, Constitution and Proceedings Regulations, 1929. (S. R. & O. 1929, No. 3, price 2*d.*)

General waste.—See the Waste Materials Reclamation Trade, Great Britain, General Waste Branch, Constitution and Proceedings Regulations, 1929. (S. R. & O. 1929, No. 4, price 2*d.*)

Minimum wage: Boot and shoe repairer.—If a boot and shoe repairer is also, when not engaged in repairs, employed in selling sundries, cleaning up the shop, keeping accounts, &c., he is not, while engaged in the latter duties, "waiting for work to be given him to perform" within the meaning of the Trade Boards Act, 1918, s. 8, and cannot claim to be paid in respect of that period the minimum wage applicable to boot and shoe repairers. (*France* v. *Coombes & Co.*, H. L.)

Tailoring.—See the Trade Boards (Ready-made and Wholesale Bespoke Tailoring Trade, Great Britain) (Constitution and Proceedings) Regulations, 1929 (S. R. & O. 1929, No. 765, price 2*d.*).

TRADE MARKS.

Infringement.—A. produced champagne in France of two kinds, one for sale in England, the other, of a sweeter taste, for sale in France. Both were sold in bottles of similar design and get up, but there were marked differences in the labels. A. had registered a trade mark for his English labels. B. sold in England some of A.'s French type of wine with the label used by A. for sale in France. Clauson, J., held that B. had not infringed A.'s trade mark. (*Champagne Heidsieck et Cie Monopole Société Anonyme* v. *Buxton.*)

TRADE UNIONS.

Expulsion: Injunction.—The Court will not grant an injunction to restrain the executive committee of a trade union from expelling a member if the committee is acting strictly in accordance with the rules, and honestly and in good faith. It is immaterial that the members of the committee may, in the circumstances of the case, be suspected of a bias in the popular sense against the member expelled, and that they act as prosecutors as well as judges, or are judges in their own cause. (*Maclean* v. *The Workers' Union,* Maugham, J.)

Irregular, but not ultra vires, resolution: No injunction.—The Court will not entertain an action by a member of a trade

union to restrain the executive from acting on a resolution of the union, on the ground that the resolution (though not *ultra vires*) was irregularly passed. The rule in *Foss* v. *Harbottle* (1843), 2 Hare, 461, applies. The irregularities are matters of internal administration, which can be put right by the union. (*Cotter* v. *National Union of Seamen,* C. A.)

Objects.—The rules of a trade union defined the objects of the union as being to "promote and provide funds to extend the adoption of trade union principles, and to affiliate with such other unions and federations of trade unions as, in the opinion of the executive council, may appear desirable." The union was entitled to provide funds to promote non-political unions. It was not *ultra vires* to promote the establishment of unions with a particular complexion. (*Re National Union of Seamen, Wilson* v. *National Union of Seamen,* Romer, J.)

TREASURY SOLICITOR.

Address.—On 9th January, 1929, the Law Courts Division of the Treasury, Solicitor's Department, moved to Storey's Gate. The address for service is—

The Treasury Solicitor,
Storey's Gate,
St. James's Park,
London, S.W.1.

The telegraphic address is "Proctorex, London," and the telephone number Victoria 8220.

During term time, communications relating to charity matters can also be dealt with by application to Room 708 at the Royal Courts of Justice, telephone Holborn 7641 (extension 25); telegraphic address "Proctsolic, London."

TRESPASS.

Drain connecting with public sewer.—The plaintiff and defendant were owners of adjoining properties in Wimbledon. The plaintiff owned the soil of a public road adjoining these properties, subject to the rights of the Wimbledon Corporation as

highway and sewer authority. At the defendant's request, and acting under sect. 84 of the Wimbledon Corporation Act, 1914 (which is a little wider than sect. 18 of the Public Health Acts Amendment Act, 1890), the corporation connected the defendant's drain with the sewer in the plaintiff's road. The plaintiff sued the defendant for damages for trespass. It was held that the defendant was not liable. Whether the corporation committed a trespass or not, the defendant had not done so. In making the connection the corporation acted as the public authority, not as the defendant's agents. (*Grant* v. *Derwent,* C. A.)

TROUT.

Sale during close season.—Sect. 32 of the Salmon and Freshwater Fisheries Act, 1923, prohibits the buying, selling, exposing for sale, or having in possession for sale, any trout (not being rainbow trout) between the 31st August and the 1st March. The section has been amended by the Salmon and Freshwater Fisheries (Amendment) Act, 1929, so as not to apply to—

(a) any trout which has been canned, frozen, cured, salted, pickled, dried or otherwise preserved beyond the limits of Great Britain and Ireland; or

(b) any trout which has been canned, frozen, cured, salted, pickled, dried or otherwise preserved within Great Britain or Ireland between the first day of March and the thirty-first day of August in any year; or

(c) any trout (not being an unclean trout) caught beyond the limits of Great Britain and Ireland; or

(d) any trout (not being an unclean or immature trout) caught within Great Britain or Ireland, if its capture by any net, instrument or device other than a rod and line was lawful at the time and in the place where it was caught.

The burden of proving that any trout bought, sold, exposed for sale, or in the possession of any person for sale between the 31st August and the 1st March following is not bought, &c. in contravention of the section will lie on the person buying, &c. such trout.

TRUST—TRUSTEES.

Investments.—Debentures issued by any company formed under the Agricultural Credits (Scotland) Act, 1929, are by sect. 3 of that Act to be included amongst the securities in which a trustee may invest trust funds under sect. 1 of the Trustee Act, 1925. *And see* COLONIAL STOCK, *ante*.

Public Trustee: Advisory judge.—The duty of advising the Public Trustee under Rule 15 (2) of the Public Trustee Rules, 1912, has been assigned by the Lord Chancellor to Luxmoore, J.

Repairs.—Three cases have been decided during the year as to the incidence of the costs of repairs as between capital and income. In *Re Whitaker, Rooke* v. *Whitaker,* a testator gave his residuary estate to trustees on trust for conversion, with power to postpone the conversion, and settled the proceeds on his widow for life. The estate included a number of small and old freehold houses. These houses, for some years, were kept in sufficient tenantable repair out of income, but, later, heavy expenditure was incurred in pulling down, rebuilding and reinstating some of the houses to comply with dangerous structure notices. The work was necessary by reason of the age of the buildings and their original faulty construction. Eve, J., held, applying *Re Robbins,* (1928) Ch. 721, and distinguishing *Re Gray,* (1927) 1 Ch. 242, that the costs must be borne by capital, which could be raised by mortgage. The case was within para. (v) of Part II. of the Third Schedule of the Settled Land Act, 1925.

In *Re Conquest, Royal Exchange Assurance* v. *Conquest,* Clauson, J., explained his decision in *Re Gray,* (1927) 1 Ch. 242, and held that where land is held on trust for sale, the costs of structural repairs and reconstruction of buildings should be borne by capital without any recoupment out of income. (See Article, "Law Notes," June, 1929, at p. 176.)

The question as to the incidence of the cost of repairs when an intestate was possessed of freehold cottages in a bad state of repair and left a widow entitled to a life interest, was discussed in *Re Smith.* Maugham, J., after considering *Re Gray,* (1927) 1 Ch. 242, and *Re Robins,* (1928) Ch. 726, held that (1) the Court

has jurisdiction to direct payment for repairs out of capital if trustees for sale ask the Court's advice; (2) there is nothing in the Administration of Estates Act, 1925, to support the view that the widow is entitled to have repairs, required at the date of the intestate's death, paid for out of capital, irrespective of the nature of the repairs; (3) all repairs which are improvements within Part I. or II. of the Third Schedule of the Settled Land Act, 1925, should be paid for out of capital; and (4) repairs which are not improvements within those Parts of that Schedule ought to be borne by capital if they constitute permanent improvements.

UNEMPLOYED WORKMEN ACT, 1905.

Repeal.—The Act is repealed as from the 1st April, 1930, by sect. 12 of the Local Government Act, 1929, but the Minister of Health can make such orders as are allowed by sect. 8 of the repealed Act.

UNEMPLOYMENT.

With the object of diminishing unemployment, the Development (Loan Guarantees and Grants) Act, 1929, authorises Treasury guarantees of certain loans to be raised in connection with public utility undertakings, and provides for financial assistance from the Government in relation to development works.

UNEMPLOYMENT INSURANCE.

Banking industry.—See the Banking Industry Special Scheme (Amendment) Order, 1929 (S. R. & O. 1929, No. 287).

Boards of assessors.—See the Unemployment Insurance (Boards of Assessors) Regulations, 1929 (S. R. & O. 1929, No. 659).

Courts of referees.—See the Unemployment Insurance (Courts of Referees) (Amendment) Regulations (S. R. & O. 1929, No. 475).

Insurance industry.—For a variation of this industry's special scheme, see S. R. & O. 1929, No. 263.

Insurance year.—By the Unemployment Insurance (Insurance

Year) Regulations, 1929 (S. R. & O. 1929, No. 325), the period, 8th July, 1929, to 6th July, 1930, was made an insurance year.

Mercantile marine.—Special orders applicable to the mercantile marine have been made. (S. R. & O. 1928, Nos. 1092, 1093.) See also Mercantile Marine, Collection of Contributions (Amendment) Regulations, 1928 (S. R. & O. 1928, No. 1069).

Northern Ireland.—The agreement set forth in the Unemployment Insurance (Northern Ireland Agreement) Act, 1926, has been continued in force by a new agreement confirmed by the Unemployment Insurance (Northern Ireland Agreement) Act, 1929, which was brought into force under sect. 2 (2) by an Order in Council made on May 7, 1929, declaring that the Parliament of Northern Ireland had passed a similar Act.

Police.—The Unemployment Insurance (Temporary Police) (Exclusion) Special Order, 1929 (S. R. & O. 1929, No. 589), revokes the Unemployment Insurance (Police Reservist Exclusion) Special Order, 1923. The Order excludes from the employments specified in Part I. of the First Schedule to the Unemployment Insurance Act, 1920, employment in a temporary capacity as a member of a police force where the person so employed was not normally before such employment in an employment such as to make him an employed person. The Order does not apply to employment as a special constable.

Review of claims.—See the Unemployment Insurance (Review of Claims) Regulations, 1929 (S. R. & O. 1929, No. 140).

State contribution.—As from the 1st April, 1929, the contribution payable by the State under the Unemployment Insurance Acts, 1920 to 1929, has been at a rate equal to one-half of the aggregate amount of the contributions paid in respect of the employed person by himself and his employer or, in the case of an exempt person, paid by his employer. (Unemployment Insurance Act, 1929.)

Statutory conditions for benefit.—Sect. 14 (2) of the Unemployment Insurance Act, 1927 (which provides that an insured contributor who proves certain matters within a period of twelve months from the commencement of that Act (19th April, 1928)

shall be treated as if he had proved that the first statutory condition was fulfilled in his case and shall continue to be so treated throughout any benefit year which is current in or commences within the said period), now has effect as if the words "twenty-four months" were substituted for the words "twelve months" in both places where those words occur in the said sub-section. This is by the Unemployment Insurance (Transitional Provisions Amendment) Act, 1929.

Treasury advances.—By the Unemployment Insurance Act, 1928, the limit on the amount, which may be outstanding during the deficiency period, of the advances to be made by the Treasury for the purpose of discharging the liabilities of the unemployment fund, was increased to 40,000,000*l*. But no further advances are to be made after the 31st December, 1930, unless and until the outstanding advances have been reduced below 30,000,000*l*.

VACCINATION.

The Vaccination Order, 1898, as amended by subsequent Orders, has again been amended by the Vaccination Order, 1929 (S. R. & O. 1929, No. 640). The chief amendments are that a new First Schedule is substituted for the First Schedule to the Order of 1898 ("Instructions to Vaccinators under Contract"), and that paragraph 6 of Form A. in the Schedule to the Order of 1924 (as to inspection of a vaccinated child) is altered, and a new paragraph (with regard to re-vaccination) is inserted in that Form.

VENDOR AND PURCHASER.

Building society merger.—Land was mortgaged to Building Society A. The society united with another society to form Building Society B. The money was paid off, and the statutory receipt was executed by Building Society B. A purchaser of the land was held to be entitled to have an abstract of the document by which the union was effected. Upon a union of societies, the property of the uniting societies does not necessarily pass to the new society. (Building Society Act, 1874, s. 33; Building Society Act, 1877, s. 5.) (*Re Fryer and Hampson's Contract*, C. A.)

General words: Right enjoyed with land sold.—A. sold land to B. A. had used a way (not a "way of necessity") over land retained by him in connection with the land sold. The contract for sale contained no reference to any right of way. In the draft conveyance, B.'s solicitors expressly included a right of way, but, on A.'s objection, this was struck out. B. was held not to have the right of way. Although, by sect. 62 of the Law of Property Act, 1925, the conveyance operated to pass the right of way to B. as being a right enjoyed with the property sold, B. was not entitled to have the right under his contract, and A. could have insisted on words being inserted in the conveyance to negative the right. (*Re Peck and the London School Board*, (1893) 2 Ch. 315.) It was understood between the parties that there should be no right of way, and the conveyance could be rectified on the ground of mutual mistake. (*Clark* v. *Barnes*, Luxmoore, J. Cp. *Borman* v. *Griffith*, *ante*, under LANDLORD AND TENANT.)

Joint tenants: Trust for sale—Power of attorney.—It was held by Eve, J., that, joint tenants being trustees for sale under sect. 36 of the Law of Property Act, 1925, a purchaser cannot be compelled to take a conveyance from one of them and an attorney appointed by the other. (*Green* v. *Whitehead*.) The Court of Appeal affirmed this decision, but on the ground that the power of attorney was not wide enough to authorise the conveyance.

Leaseholds: Purchaser's right to have assignment to nominee.—On a sale of leaseholds by an original lessee, completion in favour of a solvent nominee of the purchaser can be enforced, unless it is shown that the sale was granted upon considerations purely personal to the purchaser, but the purchaser must join in the assignment for the purpose of guaranteeing the performance of the covenants. (*Curtis Moffat, Ltd.* v. *Wheeler*, Maugham, J.)

Local land charge: Incidence.—A contract for sale of a house adjoining a road not then taken over by the local authority was made in May, 1928. The contract contained the following con-

dition:—"The vendor shall indemnify the purchaser in respect of any local land charge required to be registered, and which has been registered before the date of the contract, and in respect of any requirement by a local authority or other local land charge of which the vendor has had notice before the date of the contract." Before January 5th, 1926, the local authority had approved plans and a provisional apportionment of the expenses of making up the road under the Private Street Works Act, 1892; and on that date the resolution and a provisional apportionment of 96*l.* on the house in question were registered as a local land charge, pursuant to sect. 15 (4) of the Land Charges Act, 1925. In July, 1927, the vendor was served with notice of the resolution and provisional apportionment. The purchase was completed in June, 1928, and the works were completed in July, and in September the purchaser was served with notice of a final apportionment on him of 91*l.* Clauson, J., held that the vendor must, under the condition, indemnify the purchaser against the charge, though it only became an effective charge on completion of the works. (*Re Middleton and Young's Contract.*)

Non-disclosure: General Conditions of Sale of 1925.—If, on a sale of property subject to the General Conditions of Sale of 1925, disclosure is not made of the existence of two sewers on the property, which are vested in the local authority and known to the vendor, the vendor can enforce specific performance, subject to compensation. The property is not substantially different from that agreed to be sold, and Condition 35 (2) is not excluded by reason of the vendor's knowledge of the defect. (*Re Belcham and Gawley's Contract*, Maugham, J.)

"Subject to contract."—Eve, J., said, in *Wilson* v. *Balfour*, that he shared the opinion of Sargant, L.J., in *Chillingworth* v. *Esche*, (1924) 1 Ch. 97, that the expression "subject to contract" had acquired a definite legal meaning; except in special circumstances, it meant "subject to the execution by the parties of a formal contract"; so that the offeree was not bound until he had signed a formal contract.

"Subject to our solicitor's approval of the title."—The meaning of these words in a contract for purchase of land was

discussed by Maugham, J., in *Curtis Moffat, Ltd.* v. *Wheeler*. His Lordship followed the Court of Appeal's view in *Hussey* v. *Horne-Payne* (1878), 8 Ch. D. 670, and not the dictum of Lord Cairns in that case in the House of Lords (4 App. Cas. 311). The words do not express merely what the law implies, but introduce an additional term. The vendor cannot enforce specific performance if the purchasers' solicitor, acting in good faith, disapproves of the title.

WAR LOAN.

Exchange of securities.—The War Loan (Exchange of Securities Rules (No. 3), 1928 (S. R. & O. 1928, No. 1095) apply to the exchange of 4*l*. 10*s*. per cent. Treasury Bonds, 1932—34, for 5*l*. and 4*l*. per cent. National War Bonds (Series 4) and 4*l* 10*s*. per cent. Treasury Bonds due on the 1st February, 1929. The most important rules for solicitors are 3 and 4, which affect powers of investment and the construction of wills respectively.

3. A power or direction, whether subject or not to any restrictions or conditions, to invest in any old securities shall extend to authorise an investment, subject to the same conditions and restrictions (if any) in new securities.

4. In any Act passed or instrument executed before the date of these rules, references to any old securities may, if the securities are exchanged for new securities, be construed as references to any new securities received in exchange therefor, and in the case of any testamentary instrument executed before the date of these rules any disposition which would have operated as a specific bequest of any such securities shall, if the same are so exchanged, be construed as a specific bequest of the amount of new securities for which the same were exchanged.

WATER.

Dentist: Business premises.—If there is a statutory obligation to supply water for domestic purposes, but only by meter or agreement where part of the premises is used for trade or business, a dentist cannot insist on being supplied at the ordinary domestic rates. The premises are being used partly for business purposes. (*Manchester Corporation* v. *Buttle*, Eve, J.)

WEIGHTS AND MEASURES.

See the Liquid Fuel and Lubricating Oil Regulations, 1929 (S. R. & O. 1929, No. 183, price 3*d*.), and the Additional Regulations (S. R. & O. 1929, No. 751).

WILL.

Codicil to revoked will.—A testatrix made a will in 1893, disposing of all her property. In 1907 she made another will, making a different disposition of all her property. In 1911 she made a codicil to the will of 1907. In 1921 she made another codicil, described as being a codicil to her will of 1893 and not referring to the will of 1907 or the codicil of 1911. The effect of the codicil of 1921 was to revoke the will of 1907, and, therefore, also the codicil of 1911, and to revive the first will as the only effective disposition made by the testatrix. (*Re Baker*, *Baker* v. *Baker*, Eve, J.)

Codicil varying will: Extent of variation.—By his will, a testator devised his house and lands at X. on trust for A. for life, with divers remainders over. He also bequeathed family jewellery, plate, pictures, &c. to go with the house, and gave the residue of his estate on the same trusts as the house and lands. By codicil, he gave the house and all the furniture, &c. in it to B. for life. Luxmoore, J., held that B. was only entitled to a life interest in the house and furniture in it, not to any interest in any of the other property, which went to A. for life. In reading a will and codicil together, the codicil must be construed so as to interfere with the will as little as possible. Where personalty is given by will on the same trusts as realty, and the trusts of the realty are altered by codicil, the trusts of the personalty will only be altered by the codicil if the intention to keep the two classes of property united appears in the codicil as well as in the will. (*Re Bund*, *Cruikshank* v. *Willis*.)

Condition void for repugnancy.—A condition attached to a devise requiring the devisee, if wishing to sell within twenty years from the testator's death, to offer the land to A. at a certain price, is void as repugnant. The devisee is restrained not from selling to a particular person, but from selling to anybody but a particular

person. (*Re Rosher* (1884), 26 Ch. D. 801.) The devisee having sold to A. at the fixed price, which was much less than the real value of the land, no part of the death duties were payable by A. (*Re Cockerill, Mackaness* v. *Percival*, Eve, J.)

Construction: Admissibility of external evidence.—A testator gave property to trustees "to distribute among the various good works which my wife and I have been in the habit of assisting." The testator and his wife were Plymouth Brethren. Affidavits were sworn to the effect that among Plymouth Brethren "good works" is a phrase in common use to indicate works distinctly religious, as opposed to works of a merely philanthropic, benevolent or other character. Maugham, J., held that he could not admit the affidavits as justifying him in putting upon the phrase "good works" the limited meaning that the works were to be religious. (*Re How, How* v. *How*.)

Construction: Distribution of trust fund—Share of child of deceased beneficiary.—A will provided that at the end of twenty-one years a trust fund should be divided into five shares, that one of such shares should be paid to each of the testator's four sons, and that in the event of any of the sons dying before the end of the twenty-one years leaving a child or children, such child or children should take the share to which such son would have been entitled if he had survived, and in default of issue of any son, the share of such son should be payable to the surviving sons equally. It was held that the child of a son who died before the end of the twenty-one years was entitled only to the one-fifth share which his father would have taken, and was not entitled to participate in the share of a son who died before the end of the twenty-one years without issue. (*Ganapatty Pillay* v. *Alamaloo*, P. C.)

"Contents of room."—Eve, J., held that a gift by a barrister of "the contents of my room at 2, Garden Court, Temple, including all the law library therein," included some autograph letters from Lord Nelson, Robert Burns, and other distinguished persons which the testator had kept in the room. (*Re Neilson, Cumming* v. *Clyde*.)

Entailed chattels: Will before 1926—Sale.—Where personal chattels were given by the will of a person, who died before 1926, to trustees on trusts purporting to create entailed interests, sect. 130 (5) of the Law of Property Act, 1925, does not apply so as to enable the trustees to sell. Chattels could not then be entailed. But leave was granted to the trustees to sell under sect. 57 of the Trustee Act, 1925. (*Re Hope's Will Trust, Hope* v. *Thorp*, Eve, J.)

Gift on failure of prior gift.—A testatrix gave the residue of her estate to her parents during their joint lives and to the survivor of them, and, subject thereto, to her husband if living after their deaths. Should he have pre-deceased both her parents, she gave the residue to X. Her husband survived her parents, but died in her lifetime. It was held that there was an intestacy; the property did not go to X. The husband had satisfied the condition of the gift to him in the lifetime of the testatrix, and she could not have contemplated the failure of the gift to him by lapse. (*Re Graham, Graham* v. *Graham*, Eve, J.)

Gift to "A. and her descendants."—Under a devise of real estate by a testator, who died before 1926, "to A. and her descendants," A. took an estate tail. (*Re Sleeman, Cragoe* v. *Goodman*, Clauson, J.)

Gift to "the children of A. and B."—A testator devised freeholds "to be equally divided between the children of A. and B.," A. and B. being brothers of the testator. Clauson, J., held, following *Re Walbran*, (1906) 1 Ch. 64, and *Re Harper*, (1914) 1 Ch. 70, that it was a gift to B. and the children of A., and, following the former and distinguishing the latter case, that B. took half, and the children of A. the other half between them. (*Re Prosser, Prosser* v. *Griffith*.)

Grave, legacy for upkeep of.—The Legal Board of the Church Assembly has framed a form of legacy, and a form of receipt for a gift *inter vivos*, to the Diocesan Board of Finance for the upkeep of a grave. The forms are set out in the Law Society's *Gazette* for May, 1929, p. 144, and can be obtained from the

Press and Publication Board, Church House, Westminster, S.W.1, price 2*d*.

Jesuit Church: Legacy.—A testatrix, who died in 1910, bequeathed her residuary estate, subject to a life interest therein, to the person who should be Superior of the Jesuit Church, in Farm Street, London, at the moment when the legacy should fall due, and, failing him, to any other representative of the Order of the Society of Jesus. The effect of this was to make a good gift to the Superior of the Jesuit Church, in Farm Street, for the benefit of that particular church. It was not, as Tomlin, J., had held, an absolute gift to him free from any trust. The gift was valid, though made before the Roman Catholic Relief Act, 1926, repealed the provisions of the Roman Catholic Relief Act, 1829, as to Jesuits. (*Re Barclay, Gardner* v. *Barclay,* C. A.)

Legacies to clubs.—A legacy of 100*l*. of Funding Loan to a club in trust to pay the interest yearly to the staff Christmas fund is not good, not being charitable. Nor is a legacy of 300*l*. of Funding Loan to a county cricket club in trust to pay the interest yearly to the nursery fund; being merely for the encouragement of sport, it is not charitable. (*Re Nottage,* (1895) 2 Ch. 649.) So held by Romer, J., in *Re Patten, Westminster Bank, Ltd.* v. *Carlton.*

"Money."—Four cases on the meaning of "money" in a will have been decided during the year. In *Re Gates, Gates* v. *Cabell,* a testator gave "all my money" to C. The testator left (a) 2*l*. 17*s*. cash in the house, 1*l*. 13*s*. 4*d*. at his solicitors, an uncashed cheque for 5*l*. 5*s*., and 1,600*l*. on current account at his bank; (b) 800*l*. outstanding on mortgage, 500*l*. War Loan, stocks and shares valued at 1,280*l*., furniture worth 200*l*., and the equity of redemption in some cottages. There was nothing in the context or the surrounding circumstances to alter the strict meaning of money, and the Court of Appeal held, applying *Re Taylor,* (1923) 1 Ch. 99, that C. was only entitled to the items comprised in (a).

In *Re Putner, Putner* v. *Brooke,* a testator, after directing his debts, &c. to be paid, gave his leasehold house to his son, Harry, and proceeded as follows:—"I also leave all my money to my

wife, and, after her death, the money to be equally divided with the four boys and two girls " (naming them), " the piano, wireless and gramophone to S. F. P., the chiming clock to H. P., my silver watch to S. Furniture to be divided between the family after my wife's death, my wife to remain in the house after my death as long as she likes." The testator owned a leasehold house, furniture, personal effects, National Savings Certificates and L.C.C. local bonds, cash on current and deposit account, and cash at the Post Office Savings Bank. Eve, J., held that there was nothing in the will to enlarge the meaning of " money " beyond its strict legal meaning of cash; it must be limited to the three items of cash at the bank. There was a partial intestacy, and Harry must bring the house into account before he could claim as one of the next of kin.

A testator, who made his own will, appointed an executor, and directed all his debts and funeral expenses to be paid. After certain specific bequests, he left his household effects and a 25*l.* savings certificate, and the option of living at his residence, to his housekeeper, and continued: " The remainder of any monies shall be equally divided between the following persons." Here followed the names of nine persons, including his two children and his housekeeper. It was held by Astbury, J., that this gift passed everything the testator had, whether realty or personalty. A gift of the remainder of money following a direction to pay debts passes all property liable to pay debts. (*Stocks* v. *Barré* (1859), Joh. 54, 56; *Re Emerson,* (1929) 1 Ch. 128, distinguished.) (*Re Mellor, Porter* v. *Hindsley*.)

In *Re Shaw, Mountain* v. *Mountain,* Farwell, J., followed *Re Mellor* and held that " money " in the context included everything, even realty. The will was made for the testatrix by a layman. After a direction to pay debts and expenses, 700*l.* was bequeathed in pecuniary legacies, and the will concluded with a direction to divide " any balance of money left after all my expenses have been paid " among certain persons. There was no other residuary clause. The testatrix had at her death 30*l.* cash in the house, 7*l.* on bank deposit, 36*l.* in the Post Office, 500*l.* War Stock, some shares in a company worth 25*l.*, 68*l.* furniture and household effects, and some realty worth

750*l*. The debts and expenses exhausted the first three items. Farwell, J., held that the word "money" included everything.

Referential trust: Trusts varied on divorce.—Where a testator directs property to be held upon the trusts of a marriage settlement, which is varied by the Divorce Court after the testator's death, the settled property will continue to be held on the trusts of the settlement as those trusts stood before being varied. (*Re Gooch, Gooch* v. *Gooch*, Clauson, J.)

Satisfaction of debt by legacy.—If a testator, who owes X. 100*l*., gives him a legacy of 100*l*., free of duty, the presumption of satisfaction of the debt by the legacy is not rebutted by the fact that there are arrears of interest owing on the debt at the testator's death. (*Fitzgerald* v. *National Bank*, Talbot, J.)

Secret trusts.—The decision of the Court of Appeal (1929 Y. B. p. 1—271) has been affirmed by the House of Lords. A testator gave a legacy to five trustees, stating in the will that they were to hold it on the trusts indicated to them. The details of the trusts were communicated to the trustees and accepted by them, and one of the trustees drew up a memorandum recording the trusts on the day the will was executed. Their Lordships held that parol evidence was admissible to prove what the trusts were and that the will and memorandum established a valid trust. It was too late to question the decisions in *Re Fleetwood* (1880), 15 Ch. D. 594, and *Re Huxtable*, (1902) 2 Ch. 793, which covered the point. (See 1929 "Law Notes," p. 91.) (*Blackwell* v. *Blackwell*.)

Servants, legacies to.—Under a bequest to servants in the testator's employ of "one year's wages, in addition to any wages owing by me to them," nothing can be claimed by a servant on account of the benefit which he has enjoyed in the way of free quarters or payments made to him for the purpose of securing free quarters. The bequest is one of the actual cash payment by way of wages. (*Re Peacock, Public Trustee* v. *Birchenough*, Clauson, J.)

Substitutional or cumulative codicils?—A testator made a codicil to his will, whereby he revoked the appointment of one

executor and appointed another in his place. The codicil also revoked a legacy to a sister-in-law, and bequeathed her a legacy of ——*l*. It also made certain declarations, and gave certain directions and bequeathed legacies additional to those in the will. On the same day, the testator executed another codicil, which was practically a duplicate of the former, except that the blank in the legacy to the sister-in-law was filled in by the sum of 25*l*. Eve, J., held that the codicils were substitutes, one being merely a repetition of the other. (*Re Michell, Thomas* v. *Hoskins*.)

"Wife."—A testator of the name of Smalley, who, at the time of making his will, was married to Mary Ann, but separated from her and living with Eliza Ann, with whom he had gone through a ceremony of marriage, gave all his property to "my wife, Eliza Ann Smalley." The Court of Appeal held that Eliza Ann took the property. Evidence was admissible of the facts and circumstances. (*Doe* d. *Hiscocks* v. *Hiscocks*, 5 M. & W. 363.) In the circumstances, the testator evidently used the word "wife" in a secondary sense. (*Re Smalley, Smalley* v. *Scotton*.)

Wireless set: Furniture.—A wireless set contained in an oak cabinet will pass under a bequest of "furniture." (*Re Willey, Goulding* v. *Shirtcliffe*, Clauson, J.)

WORKMEN'S COMPENSATION.

"Added peril."—While a workman, employed as a harvest hand, was driving a mower along a cornfield, the chain connecting the horses to the machine became detached. The workman, instead of going to the horses' heads, walked along the dividing pole between the two horses, balancing himself as he went. As a result, the horses started, and the workman sustained injuries causing permanent disablement. The House of Lords held that the accident arose out of added peril caused by the workman's own conduct, and compensation under the Workmen's Compensation Act, 1925, was not payable. (*Stephen* v. *Cooper*, H. L.)

Arbitrator's power to make interim award.—If weekly payments are being made to an injured workman under the Workmen's Compensation Act, 1925, and are discontinued otherwise

than in accordance with sect. 12 of the Act, the arbitrator under the Act has power to make an interim award pending the final hearing of the arbitration so as to secure that the weekly payments shall be continued meanwhile. (*Woodrow* v. *Trawlers (White Sea and Grimsby), Ltd.*, C. A.)

Children's allowance.—If a workman is killed by an accident giving rise to a claim for compensation by his dependants under the Workmen's Compensation Act, 1925, the additional "children's allowance" is not restricted to children of the deceased. If the workman leaves a dependant over fifteen and dependants under fifteen, the latter are eligible for the allowance as being "children under fifteen." It is not necessary that the children should be children of the workman—brothers and sisters of the workman are equally "children under fifteen" within the meaning of the Act. (*Shotts Iron Co., Ltd.* v. *Curran*, H. L.)

Course of employment: Suffocation of night watchman.—A night watchman, employed to watch lights along a trench on a highway, removed his brazier to a workmen's shelter some three hundred yards from the trench, covered the shelter with a tarpaulin, laid down to sleep and was suffocated. His widow had no claim for compensation under the Workmen's Compensation Act, 1925. Death was not due to an accident arising out of and in course of the employment. (*Buckland* v. *W. and C. French*, C. A.)

Dependants: Wife.—If a woman marries a workman who has already suffered an accident in respect of which compensation will be payable under the Workmen's Compensation Act, 1925, knowing that the workman will shortly die as a result of the accident, she is entitled to compensation on his death. But for the injury due to the accident, the wife would have been dependent on deceased's earnings at the time of his death, so that at the date of death (which was the critical date—not the date of the accident) she was a dependent member of the deceased's family. (See "Curious Cases," 48 "Law Notes" (1929), p. 86.) (*Brazewell* v. *Emmott and Wallshaw, Ltd.*, C. A.)

Dependency: Date for determination.—The date to be taken

for the purpose of testing who are "dependants" of a deceased workman under the Workmen's Compensation Act, 1925, is the date of death. A boy of fifteen was employed as a pony driver in a colliery, earning only the equivalent of his maintenance at home, so that it was admitted his parents were not then dependent. The boy was injured by an accident arising out of and in the course of his employment, and eventually died as a result thereof. Since it was shown that at the date of death, had the boy recovered, he would have been earning a wage which would have contributed to the family fund more than the cost of his maintenance, the Court of Appeal held that the father was entitled to compensation as being a dependant. (*Nugent* v. *Londonderry Collieries, Ltd.*, C. A., and see next case.)

Earnings.—The earnings which are to be taken as the basis of compensation under the Workmen's Compensation Act, 1925, do not include sums earned by the workman in an outside employment, although engaged in by the workman with the master's sanction and approval. The dominant question is, not how much the workman was earning, but how much he was earning in the employment giving rise to the compensation claim. Thus a workman, allowed by his employers to sit as workmen's representative on a Court of Referees of the local employment committee, receiving from public money, a sum per day representing his loss of the day's wages, cannot include that sum for the purpose of assessing compensation. (*McGee* v. *William Muir & Co.*, C. A.)

Incapacity: Loss of eye.—A miner, as a result of an accident arising out of and in the course of his employment, permanently lost the sight of one eye, and as a result, though physically fit to resume his former work, was unable to find employers willing to employ him. The House of Lords held that he must be treated as still subject to total incapacity. The Workmen's Compensation Act, 1925, s. 9 (4) (which enables a workman to be treated as under total incapacity if, though recovered sufficiently to be fit for employment of a certain kind, he in fact cannot, after reasonable efforts, obtain it), is not confined in its operation to cases where the recovery is still so incomplete as to bar the former employment.

Lord Dunedin said that his own observations to the contrary in *Bevan* v. *Nixon's Navigation Co.*, (1929) A. C. 44, went too far. (*Tannoch* v. *Brownieside Coal Co., Ltd.*)

Industrial diseases.—The Workmen's Compensation (Industrial Diseases) Consolidation Order, 1929 (S. R. & O. 1929, No. 2), consolidates and amends the previously existing orders on industrial disease. It provides as follows:—

(1) Subject to the modifications hereinafter specified the provisions of section 43 of the Workmen's Compensation Act, 1925, shall extend and apply to the diseases, injuries, and processes, specified in the first and second columns of the Schedule annexed to this Order, as if the said diseases and injuries were included in the first column of the Third Schedule to the Act, and (where processes are specified in the second column of the annexed Schedule) as if the said processes were set opposite in the second column of the Schedule to the Act to the diseases or injuries to which they are set opposite in the second column of the Schedule annexed hereto.

(2) A person suffering from any of the diseases described in the Schedule annexed to this Order as **dermatitis** produced by dust or liquids, ulceration of the skin produced by dust or liquids, and ulceration of the mucous membrane of the nose or mouth produced by dust, shall not be entitled to compensation under the provisions of the said section on account of the said disease if he is thereby disabled only for employment in the particular process in which the disease has been contracted or other processes involving risk of the said disease, unless the judge, committee or arbitrator is satisfied that the disease has been contracted through long continued exposure to dust or liquids in the industry in which he was engaged at the time of his disablement.

(3) A person suffering from **cataract** shall not be entitled to compensation under the provisions of the said section on account of that disease for more than six months in all, or for more than four months unless he has undergone an operation for cataract.

Provided that where the judge, committee or arbitrator is satisfied on the advice of the medical referee that an operation could

not for medical reasons be performed within four months from the date of disablement, or that having undergone an operation, the worker is still disabled by the cataract after the expiration of six months from such date, compensation may be continued for such further period and subject to such conditions as the judge, committee or arbitrator may direct, without prejudice, however, to the right of review conferred by section 11 of the Act.

(4) A person suffering from **writer's cramp** shall not be entitled to compensation under the provisions of the said section on account of that disease for more than twelve months.

(5) A person suffering from **twister's cramp** shall not be entitled to compensation under the provisions of the said section on account of that disease unless he is totally disabled thereby from following the occupation of a twister, and the compensation shall cease as soon as he is able to earn at another occupation a weekly sum equal to 75 per cent. of the average weekly earnings on which the compensation has been fixed, or at the expiration of six months, whichever is the earlier.

(6) In the application of the provisions of the said section to **telegraphist's cramp** so far as regards a workman employed by the Postmaster-General, the Post Office Medical Officer under whose charge the workman is placed shall, if authorised to act for the purposes of the said section by the Postmaster-General, be substituted for the certifying surgeon.

SCHEDULE.

Description of Disease or Injury.	*Description of Process.*
1. Arsenic poisoning or its sequelae.	Handling of arsenic or its preparations or compounds.
2. Lead poisoning or its sequelae.	Handling of lead or its preparations or compounds.
3. (a) Poisoning by benzene and its homologues, or the sequelae.	Handling benzene or any of its homologues, or any process in the manufacture or involving the use thereof.
(b) Poisoning by nitro- and amido-derivatives of benzene and its homologues (trinitrotoluene, anilin, and others), or the sequelae.	Handling any nitro- or amido-derivative of benzene or any of its homologues, or any process in the manufacture or involving the use thereof.

Description of Disease or Injury.	*Description of Process.*
4. Poisoning by dinitrophenol or its sequelae.	Handling dinitrophenol, or any process in the manufacture or involving the use thereof.
5. Poisoning by nitrous fumes or its sequelae.	Any process in which nitrous fumes are evolved.
6. Dope poisoning (that is, poisoning by any substance used as or in conjunction with a solvent for acetate of cellulose) or its sequelae.	Any process in the manufacture of aircraft.
7. Poisoning by tetrachlorethane or its sequelae.	Any process in the manufacture or involving the use of tetrachlorethane.
8. Poisoning by carbon bisulphide or its sequelae.	Any process involving the use of carbon bisulphide or its preparations or compounds.
9. Poisoning by nickel carbonyl or its sequelae.	Any process in which nickel carbonyl gas is evolved.
10. Poisoning by *Gonioma Kamassi* (African boxwood) or its sequelae.	Any process in the manufacture of articles from *Gonioma Kamassi* (African boxwood).
11. Manganese poisoning.	Handling of manganese or substances containing manganese.
12. (a) Dermatitis produced by dust or liquids.	——
(b) Ulceration of the skin produced by dust or liquids.	——
(c) Ulceration of the mucous membrane of the nose or mouth produced by dust.	——
13. (a) Epitheliomatous cancer or ulceration of the skin due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.	Handling or use of tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.
(b) Ulceration of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.	Handling or use of tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.
14. Chrome ulceration or its sequelae.	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium, or their preparations.
15. Scrotal epithelioma (chimney-sweep's cancer).	Chimney-sweeping.
16. Compressed air illness or its sequelae.	Any process carried on in compressed air.
17. Cataract in glassworkers.	Any process in the manufacture of glass involving exposure to the glare of molten glass.

Description of Disease or Injury.	*Description of Process.*
18. Cataract caused by exposure to rays from molten or red hot metal.	Any process in the manufacture of iron or steel normally involving exposure to rays from molten or red hot metal.
19. The disease known as miner's nystagmus, whether occurring in miners or others, and whether the symptom of oscillation of the eyeballs be present or not.	Mining.
20. Subcutaneous cellulitis of the hand (beat hand).	Mining.
21. Subcutaneous cellulitis or acute bursitis arising at or about the knee (beat knee).	Mining.
22. Subcutaneous cellulitis or acute bursitis over the elbow (beat elbow).	Mining.
23. Inflammation of the synovial lining of the wrist joint and tendon sheaths.	Mining.
24. Glanders.	Care of any equine animal suffering from glanders; handling the carcase of such animal.
25. Telegraphist's cramp.	Use of telegraphic instruments.
26. Writer's cramp.	——
27. Twister's cramp caused by twisting of cotton or woollen (including worsted) yarns.	——
28. Inflammation, ulceration or malignant disease of the skin and subcutaneous tissues due to exposure to X-rays or radio-active substances.	——

Medical certificate: Conclusiveness.—If a medical referee reports, under sect. 19 of the Workmen's Compensation Act, 1925, that a workman has completely recovered, fresh evidence cannot be adduced before the arbitrator to show that this is not the case. The medical certificate is made conclusive, and the arbitrator cannot himself enquire into the matter. If the certificate is ambiguous, the arbitrator may refer it back to the medical referee, but otherwise the certificate must be accepted and acted on. (*Wilsons and Clyde Coal Co., Ltd.* v. *Burrows*, H. L.)

Poor relief: Claim for repayment out of compensation.—Workmen of a colliery company were entitled to weekly payments

under the Workmen's Compensation Act, 1925. A receiver for debenture holders was appointed, and stopped the payments in pursuance of sect. 7, but agreed to pay the workmen lump sums as soon as the amounts could be agreed. The Board of Guardians gave outdoor relief to the workmen by way of loan, and applied in the debenture holders' action for an order that the receiver should pay them the amount of the out-door relief out of the lump sums payable to the workmen when agreed. The Court of Appeal, on the construction of sects. 41 and 7 (3) of the Act, held that such an order could not be made. (*Re Lewis Merthyr Consolidated Collieries, Ltd., Lloyds Bank* v. *The Company.*)

Review.—The right of an employer to apply for a review under the Workmen's Compensation Act, 1925, s. 11, is not ousted by the certificate of a medical referee under sect. 12 (3) of the Act. (*Tempus Shipping Company, Ltd.* v. *Trott,* C. A.)

Review of weekly payments.—A collier, being partly incapacitated by an accident arising out of and in the course of his employment, entered into an agreement with his employers by which, after reciting that his average weekly earnings for twelve months before the accident were 3*l.* 19*s.* 4*d.*, it was agreed that the employers should find him suitable employment and pay him the wages which he could earn therein and, in addition to these wages in each week, half the difference between his said average weekly earnings and the wages he could earn at the said employment by working while the pit was at work, but not in any case exceeding 1*l.* After weekly payments under the agreement had been made for some years, the rate of wages having fallen, the employers applied for a review under sect. 16 of the First Schedule of the Workmen's Compensation Act, 1906. The Court of Appeal refused a review on the ground that a change in the rate of wages was one of the events contemplated and provided for in the agreement. (*Barber, Walker & Co.* v. *Flint.*)

Silicosis.—By the Workmen's Compensation (Silicosis) Rules, 1929 (S. R. & O. 1929, No. 9, L. 1), Rule 41 of the Workmen's Compensation Rules, 1926, now reads as follows:—"The provisions of this Rule shall apply to compensation claims and questions under the Metal Grinding Industries (Silicosis) Scheme,

1927, or the Various Industries (Silicosis) Scheme, 1928, with such modifications as the nature of the case may require."

As to the **Sandstone Industry,** see the Sandstone Industry (Silicosis) Scheme (S. R. & O. 1929, No. 171, price 5*d.*).

Sphere of employment: Law or fact?—It is a question of fact whether a workman, injured by an accident, was at the time acting within the sphere of his employment, though in a manner contrary to statutory regulation. Thus, the Court of Appeal refused to disturb a finding by the County Court judge that a workman, employed as overman in a coal pit and entitled to go on to the haulage way, was not within the sphere of his employment when he was proceeding to the pit shaft to meet his relief and, contrary to statutory regulations, got on to one of the moving tubs on the haulage way. (*Davison* v. *Holmside and South Moor Collieries, Ltd.*)

Transfer of proceedings and of money.—Some alterations are made by the Workmen's Compensation Rules (No. 1), 1929. (S. R. & O. 1929, No. 267/L. 7, price 1*d.*)

Rule 90 of the Workmen's Compensation Rules, 1926, is revoked, and the following rule substituted:—

"90.—(1) If the judge of a court in England or Wales is satisfied that a matter under the Act pending in that court can proceed more conveniently in any other such court or in a court in Scotland, he may order the matter to be transferred to such other court.

"(2) Upon the making of the order, the registrar shall transmit by registered post to the registrar or sheriff-clerk of the court named in the order all original documents filed in the matter and a certified copy of all records made with reference to the matter, and shall transfer to the court named in the order any money invested in his name as registrar; and the provisions of Order VIII Rule 9 shall apply to the application for the transfer and to the transfer.

"(3) When a matter has been transferred to a court in England or Wales, whether from another such court or from a court in Scotland, the matter shall proceed in the court to

which it has been transferred as if it had originally been commenced therein."

In Rule 91 of the Workmen's Compensation Rules, 1926, paragraph (1) is revoked, and the following paragraph substituted:—

"(1) The provisions of Rule 90 shall apply to the transfer of money paid into court under the Act from one court in Great Britain to another, and to proceedings with respect to the application of the money."

After Rule 91 of the Workmen's Compensation Rules, 1926, the following rule is inserted and stands as Rule 91A:—

"91A.—(1) Where money has been paid into a court in England or Wales under the Act, the judge if satisfied that the money can be more conveniently dealt with by a county court in Northern Ireland may order the money to be transferred to that court.

"(2) Where an order has been made under the last preceding paragraph, the registrar shall transmit by registered post to the Clerk of the Crown and Peace of the court in Northern Ireland all original documents filed in the matter and a certified copy of all records made with reference to the money transferred, and the provisions of paragraph (2) of Rule 91 shall apply.

"(3) Where money paid into a court in Northern Ireland under any enactment for the time being in force in Northern Ireland relating to the compensation of workmen for injuries suffered in the course of their employment, has been ordered by that court to be transferred to a court in England or Wales, and the necessary documents have been transmitted, the money shall be received and dealt with in such manner as the judge of the court in England or Wales may think fit, subject to the directions (if any) contained in the order."

Weekly payments: Discontinuance.—Employers, having admitted liability under the Workmen's Compensation Act, 1925, made weekly payments, but subsequently alleged incapacity to have ceased and discontinued these payments otherwise than in compliance with sect. 12 of the Act. On the workman applying

for an award, the arbitrator made an interim award for the payment into Court of the weekly payments due or to become due since the discontinuance of the payments until the making of a final award. The House of Lords held (1) that the arbitrator had power to make such an interim award, but (2) had no power to order payment into Court; this could only have been ordered if the employers had proceeded under sect. 12, which was not the case. (*Anchor Donaldson, Ltd.* v. *Crossland.*)

Workman: "Little mester."—A "little mester" in the Sheffield cutlery trade is not a workman within the Workmen's Compensation Act, 1925. The appellants had a factory at Sheffield, where they ground steel and knives by contract and let out grinding to "little mesters," of whom the respondent was one. The appellants supplied the respondent with accommodation, power, water and light, for which a rent was paid by the respondent, but the respondent supplied his own apparatus and any labour he required. The appellants had the first call on the respondent's work, and paid him therefor at a fixed rate, but the respondent was free to work also for outsiders. It was held that the respondent was not working under a contract of service, and was not entitled to compensation for accidents. (*Templeton* v. *William Parkin & Co., Ltd.*, C. A.)